TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]

Term No. [illegible]251

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK AND [illegible]WE NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK, RESPONDENT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1913.

(File No. 24951)

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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 39025

Before: ABRAHAM S. GILBERT, Special Master.

NEW YORK, February 18, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for Defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 39026
MR. O'BRIEN, of Counsel for Defendant Swann.

MAYNE S. HOWARD, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CLARK:

Q. Where are you employed? 39027
A. Public Service Commission.
Q. In what capacity?
A. Accountant.
Q. How long have you been there?
A. I have been there since July 1, 1914.
Q. What education have you had along accounting lines?
A. I am a graduate of Cornell University, year 1908 as Bachelor of Arts. I have had two years of graduate work.

Q. Where, at Cornell?

A. One year I was teaching fellow at the Indiana University. Another year I had a fellowship in the University of Pennsylvania. I have also had two years' experience with the Public Service Commission. Prior to the graduate work I had one year with the First District Commission.

Q. I show you a table entitled "Taxes Paid by the Consolidated Gas Company for the years 1906 to 1918, distributed between gas cost and nongas cost," and ask you whether that was prepared by you

39029 or under your direction?

A. It was prepared under my direction and very largely checked by myself.

Q. That purports to show the taxes which are claimed should be under gas cost and those which should apply to nongas cost?

A. Yes, sir, this shows the taxes paid which we admit are gas cost taxes, and this shows the nongas taxes paid.

Q. As to the taxes, you followed the instructions of Mr. Maltbie as to which parcels of property to include?

Mr Ransom: Did he instruct a commission

39030 man?

A. Yes, sir, I understand that the notes on utility of land, dated December 16, 1919, were notes prepared by Dr. Maltbie.

Q. Those were written instructions which you got from him?

A. Yes, sir. Under Dr. Weber's instructions we distributed the taxes paid as shown on our Exhibits AA-256 and AA-255.

Q. In accordance with Mr. Maltbie's notes?

A. Yes, sir.

Q. Have you made all the divisions of particular parcels that Mr. Maltbie has made?

A. In those notes there were several parcels where the taxes were to be distributed.

Q. And you have included the taxes on all of those parcels in gas cost taxes but two, as I understand it?

A. Yes, sir.

Q. Which two have you split? I have it here, Block 1457, Lot 6?

A. That is one of them.

Q. And Block 1157, Lot 1?

A. That is the other, yes, sir.

Q. Special franchise taxes—where did you get 39032
those figures from?

A. Those are the taxes paid as shown on Defendants' Exhibit AA-256. It is to be understood that all of these taxes have been distributed so far as the years are concerned in these columns according to the year in which they are applicable.

Q. Not the year in which they are paid?

A. Not the year in which they are paid.

Q. The taxes on real estate of corporations up to 1912 is the amount actually paid?

A. Yes, sir. It is taken from Defendants' Exhibit AA-256.

Q. And 1914 to 1918, what do the figures in par- 39033
enthesis represent?

A. Those represent taxes which have not been paid, but they are derived from taking the tax rate and the amount which the company did not claim was covered by the special franchise tax assessments in the company's applications for corrections filed with the Commissioner of Taxes and Assessments. Those have been offered as Defendants' Exhibits AA-272 to AA-276.

Q. The personal property tax is from Exhibit AA-256, except for the year 1918—is that correct?

A. That is correct, yes, sir.

Q. And in the year 1918, what division did you make of the tax?

A. We allowed one-third of the tax paid in 1918 as gas cost.

Q. Under the instructions of Dr. Weber?

A. Under the instructions of Dr. Weber, yes, sir.

Q. What was the basis of that division?

A. The basis for this division was the company's application for the correction of their 1919 personal property tax assessment, which is part of their Exhibit

39035 No. 375.

Q. What analysis did you make, under Dr. Weber's direction, of that application for reduction of the 1919 personal tax?

A. That application showed the company's assets, and it also showed what assets were covered by the special franchise tax assessment, the real estate assessment, what was tax exempt, etc., and the assets which did not come under any other classification and which therefore we have taken as a personal property tax shows that less than one-third of such taxes as could not be specifically deducted, as clearly gas assets.

39036 Q. The rest were nongas assets?

A. The rest were nongas assets.

Q. As to the State tax on gross earnings, excess dividend tax and Federal capital stock tax, are those the same figures as are found on Mr. Teele's exhibit?

A. These are taken from Mr. Teele's schedules supporting the Consolidated Gas Company Exhibit No. 366.

Q. And as to the Federal Corporation Tax, you have taken Mr. Teele's figures from 1909 to 1912?

A. That is correct.

Q. What disposition do you make of that tax in year 1913, under Dr. Weber's direction?

A. For the year 1913 the company was required to make out but one return to the Federal Government for both the old corporation tax and the new income tax. The corporation tax was applicable only to the first two months, and for the next ten months we have the income tax; so, we took one-sixth of the total tax paid for that year, and considered that as the corporation tax. The other five-sixths we considered as the income tax and excluded from the gas cost taxes. The one-sixth which we considered as 39038
applicable to the corporation tax was distributed between gas cost and nongas cost taxes in the ratio which the tax which Mr. Teele took for 1912 as the gas cost tax as applicable to the total taxes paid for the year 1912, as shown in Defendants' Exhibit AA-256.

Q. That is, you took Mr. Teele's ratio and applied it to 1913?

A. I think that was so, but we wanted to make this table on the basis of our Exhibits 256 and 255.

Q. Now, you have below this table a note showing what the gas cost taxes would be with the tax on excess dividends as excluded?

A. Yes, sir. 39039

Q. You put that note on at the direction of Dr. Weber?

A. Yes, sir.

Q. And all of the taxes and nongas cost taxes are put in that classification under his direction?

A. Yes, sir.

Mr. Clark: I offer this table in evidence.

Mr. Ransom: I object to this as incompetent, irrelevant and immaterial, no proper foundation laid. It appears that it was prepared entirely

39040 Mayne S. Howard, Cross.

under peculiar instructions given by persons not produced for cross-examination concerning it, persons who have determined on an arbitrary basis which is theoretical, which they may think is sound but they carefully refrain from taking the stand to justify and defend what they do, and merely put on the stand this witness who, of course, would not be qualified to determine such a basis or to defend such a basis if he were cross-examined concerning it.

The Master: I will take it for the time being and allow you an exception.

39041

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA-451.

Mr. Clark: That is all for this witness.

CROSS-EXAMINATION BY MR. RANSOM:

Q. May I ask, Mr. Howard, were your instructions from Dr. Maltbie in writing, as you have said?

A. The notes on utility of land were written.

The Master: Have you got the notes here?

The Witness: Yes, sir.

The Master: Do you want it?

Mr. Ransom: I do.

(Witness produced paper.)

39042

The Witness: Dr. Weber told me that these were from Dr. Maltbie.

Q. Were these all the instructions that you were given?

A. Those were the written instructions. In addition I had Dr. Weber's verbal instructions that these notes were prepared under the direction of Dr. Maltbie, and that we were to distribute the real estate taxes between the gas cost and nongas cost in accordance with these notes.

Q. Were Dr. Weber's instructions in writing?

A. No, they were oral.

Q. Have you the working papers underlying this table?

A. Yes, sir.

Mr. Ransom: Can we have access to those today?

The Master: Well, I think it will save a lot of time. I don't want to bring the witness back unnecessarily—

Q. Are they here?

A. Yes, sir.

Mr. Ransom: We could go right up into one of the consultation rooms here and go over them.

39044

Mr. Clark: This man really ought to go home to bed.

The Master: But they are entitled to cross-examine him, and they are entitled to study this schedule.

Mr. Clark: I thought we would put him on and give them an opportunity to look it over.

The Master: You thought he might come back tomorrow?

Mr. Clark: Yes.

The Master: Would you rather do that?

The Witness: Yes. I think you will find it quite a long job to check it up. Some of the men that worked with me could take up these working sheets with their men.

39045

Q. Are you willing to turn over your working sheets?

A. Yes, sir.

Q. Will you leave them with us?

A. Yes, sir.

The Master: Suppose you arrange it with Mr. Davidson. He will give you a receipt for the working sheets.

Mr. Clark: He can take it up with Mr. Gottlieb. Doesn't he understand it?

39046 Sydney Straus, Direct

The Witness: Yes, sir, he can take it up with them.

Mr. Ransom: If you will turn over your working sheets we may not even have to have any conference with Mr. Gottlieb.

May I just say this for the record? Yesterday afternoon at the time the request was made or the inquiry was made whether I would produce Mr. Middleworth, I supposed that Mr. Middleworth was at the garage where he could be subpoenaed. Later in the afternoon, from one of
39047 the memoranda produced under Mr. O'Brien's subpoena, I learned that Mr. Middleworth had gone to Hudson Falls on February 10th, or thereabouts, on account of the critical illness of his mother, so that he was not subject to subpoena. Thereupon last night I arranged to get Mr. Middleworth, and I shall be able to produce Mr. Middleworth when he is desired today; but I ask that if he is to be put on he be put on today.

SYDNEY STRAUS, recalled:

39048

DIRECT-EXAMINATION BY MR. CLARK:

Q. Mr. Straus, in this bundle, are a number of test sheets signed by you. I will ask you where those tests were made, whether they were made under the same method that you described here in court, and whether they are accurate?

A. Yes, sir.

Q. Where were those made?

A. At 122 Bowery.

Q. And the same applies to such of those as are signed by your name?

A. Yes, sir.

Q. Will you state just what the figures on that page that you have before you indicate?

Mr. Ransom: I object to that as incompetent and immaterial.

Q. How they were arrived and what calculations you made or corrections you made, and where the corrections are indicated?

Mr. Ransom: I object to that.

The Master: What is the precise point of your objection?

Mr. Ransom: That the papers if they have 39050
any materiality, competency or relevancy at all, speak for themselves. The question of what they indicate the witness is not qualified to interpret.

Mr. Clark: He is qualified to interpret the things that he did himself.

Mr. Ransom: I don't think they are competent against this complainant in any respect, and have no bearing upon any issue here under the pleadings.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. Take it right from the top, the gas consumption, where did you get that figure? 39051

A. Gas consumption was obtained by reading the meter during the test.

Q. You calculated that it ran the number of feet you mentioned in an hour?

A. The meter is adjusted so that it will run five cubic feet in an hour, and any variations are taken care of by regulating the governor so that you will obtain that rate.

Q. The candle consumption, time of burning forty grains?

A. That is obtained by starting your candle bal-

39052 Sydney Straus, Direct.

ance without the weights in, the candle is lit, and then you put your weights in when the test has started.

Q. And take the time then?

A. Why, at that point—as the candle balance drops past the middle point of the scale the meter is started and the weights are put on the pan. The meter and the clock hand on that apparatus start at the same time.

Q. The clock starts automatically?

A. Yes, sir. The grains or sperm of the candle are taken at the time the clock hand starts on the
39053 meter.

Q. How did you work out the next figure, equivalent of grains per hour?

Mr. Ransom: I object to that as incompetent and fully covered. On the further ground that it appears affirmatively on the face of these papers that the test is not made in any manner authorized by statute, so that not being a test under the statute they have no bearing upon the issues here, in that it affirmatively appears from the face of the paper that instead of testing on the basis of spermaceti, 120 grains per hour, or 20 grains within the period which they use for
39054 this test, without any warrant of law, two candles are used, candles weighing roughly twelve candles to the pound, according as the man may or may not cut the candles exactly in two; the two candles are put on the candle balance and spermaceti is burned not at the rate of 120 per hour, but at the rate of 240 grains per hour, with the rate of burning of both candles taken into account, and the falling of the candle balance determined not by the burning of one candle at the rate of 20, but the differing conditions of the burning of two candles, with the papers

affirmatively showing the rate of 40 grains for this unauthorized test period ranging from 9 1/2 to 10 1/2 minutes, which means a variation of between 226 per hour and 254 grains per hour.

Mr. Clark: I object to the testimony of Mr. Ransom.

The Master: I will overrule Judge Ransom's objection.

Mr. Ransom: Exception.

Q. Will you state, Mr. Straus, how you arrived at that figure of equivalent of grains per hour?

A. That is obtained by consulting the table which 39056
has been calculated to give the corresponding grains of sperm.

The Master: Well, it is based on a table?

The Witness: It is based on a table.

The Master: Next question.

Q. How did you arrive at the pressure?

A. The pressure is obtained by taking a reading on the King pressure gauge attached to the apparatus.

Q. The barometer reading is taken from where?

A. The barometer reading is taken from the barometer in the laboratory.

Q. The temperature of gas is taken from what? 39057

A. The temperature of gas is taken from the thermometer on the meter.

Q. The observation figures?

A. The observation figures are taken by looking into the sight box and taking a reading indicated on the graduated bar.

The Master: You mean under this column, observations at intervals of a minute?

Mr. Clark: Yes.

The Master: What do these figures mean, 9.7, 8.3, and so on?

Mr. Clark: Two candles were used, just half the candle power, multiplied by two.

The Master: I want the witness to tell me.

The Witness: That indicates the comparison, the strength of the gas compared with the strength of the light of the candles.

The Master: Is there some gauge or marked instrument that indicates the candle power that you observed?

The Witness: Why, there is a pointer on the sight box which points to a certain gradation on
39059 the bar denoting candle power.

The Master: And you took that figure off that bar, or did you take a figure off and divide it in half?

The Witness: No, that figure was taken off the bar, and that bar is graduated for comparisons of one candle. Using two candles therefore we have to multiply that figure by two.

The Master: Oh, that bar indicates the precise figure that you put down here under "Observations." That is based on one candle?

The Witness: It is graduated on the basis of one candle.

39060 The Master: But you are using two candles?

The Witness: We are using two candles, therefore we have to multiply those observed readings by two.

Q. And your observed illuminating power below is obtained by multiplying the average by two, is that correct?

A. Yes, sir.

Q. On the other side of the page, where did you get your figure for pressures?

A. Those were obtained from Briscoe charts that are in the laboratory, to get the pressure for twenty-four hours of gas passing through the mains.

Q. Where did you get the figures as to sulphuretted hydrogen?

A. That was obtained by running a test on lead acetate paper put in a bulb and the gas allowed to pass over it.

Q. The reaction shows whether there is any sulphuretted hydrogen?

A. Yes.

Q. The specific gravity, where is that obtained?

A. That is obtained from an apparatus, special apparatus used to compare the rate—it takes a certain volume of air to pass through a tube of certain dimensions, and the rate it takes the same volume of gas. 39062

Q. The log correction for gas, what does that indicate?

A. The log correction for gas indicates any correction that must be made to correct for the difference in rate of the burning of gas.

Q. How do you arrive at that?

A. Those results were obtained from a table calculated on the basis of five cubic feet per hour.

Q. As a matter of fact you always regulate your gas, do you not?

A. Yes, sir.

Q. Did you ever enter anything under that log correction for gas? 39063

A. Why, I don't remember offhand.

Q. You don't remember ever having done so?

A. I don't remember, no, sir.

Q. Now, the log correction for candles, what does that mean?

Mr. Ransom: I object to that as incompetent and immaterial. It affirmatively appears that this is not a test authorized by statute, or according to the statute.

39064 Sydney Straus, Direct.

The Master: I will allow it.

Mr. Ransom: Exception.

Q. What does that mean?

A. That is the correction to be made when the candles do not burn at ten minutes.

Q. When they do not burn at the rate of 120 grains per hour?

A. Yes, sir.

Q. Is that correction made in accordance with this table, Exhibit AA-438?

A. Yes, sir.

39065 Q. The correction for barometer, how is that made?

A. That is made by consulting a table which has been figured out.

Q. Is this the table that you consult, Exhibit AA-439, to make the correction for barometer?

A. Yes, sir.

Q. And the correction for temperature?

A. The correction for temperature is also made by consulting a table.

Q. Is Defendants' Exhibit AA-440 the table you consult for temperature?

A. Yes, sir.

Q. And the result below those three figures is ob-

39066 tained how?

A. The result below those three figures is obtained by referring to a table which has been figured out for candle power, that is, the corresponding log for candle power.

Q. That is the common logarithm for the observed candle power?

A. Yes, sir.

Q. And the final figure there?

A. The final figure is obtained by adding the four columns of logarithms, which gives you the logarithm indicated which represents the corrected illuminating power.

Q. Then the final figure of corrected illuminating power is the figure whose logarithms is last figure just above it, is that correct?

A. Yes, sir.

By the Master:

Q. How long do one of these tests take, Mr. Straus?

A. Why, the test itself takes about anywhere from —you mean the preparation of the test or the test itself?

Q. No, I mean—I really did not mean what I asked you. After you have taken your observation how 39068
long does it take you to make your calculation?

A. Why, I should say about three or four minutes.

Q. To make all these calculations that you have described?

A. Yes, sir.

Q. In other words, I have before me a sheet, July 5, 1918. After you took these one-minute observations, and found it was 8.12, and doubled it to 16.24, and you found the barometer was 30.13, and the temperature of the gas 75, pressure 59, and the candle consumption as stated here, it took you about three minutes to get the final corrected illuminating power? 39069

A. Yes, sir, after I had the figures on the sheet and ready to calculate.

Q. All right. Now, get one of these tables here and we will take three minutes. I would like to have you work it out.

A. I want to say that I am not used to these tables. I have my own tables in the laboratory set up in order. I will see if it takes any longer than three minutes.

Q. If it takes any longer than three minutes I won't do it. Do you think you can calculate one of these in three minutes?

39070 Sydney Straus, Direct

A. I think so.

Q. Just take a sheet of paper. Candle consumption, time of burning 40 grains is 9.96. You have to figure what the equivalent was, don't you? That is one of the figures you have to calculate?

A. That is given from the table.

Q. The next one is pressure, 30. You don't need that for your calculation?

A. No, sir.

Q. The barometer you need?

A. Yes, sir.

39071 Q. All right, 30.13. Temperature of gas 75. Now, the average observed was 8.12. What other factor do you need?

A. That is about all I need.

Q. All right, figure that out and give me the corrected illuminating power.

Mr. Ransom: May the record show that it is now fourteen minutes to eleven.

The Master: Fourteen minutes to eleven according to that clock. Don't do it on a speed test, but get it right. I want to see whether the tables work out according to what you reported that day. I want that more than a speed test.

39072 (The witness makes calculations.)

A. 16.98.

Q. Prove it and make sure you have it right. To be perfectly fair with you, it does not tally with your reported sheet?

A. I see one error that I made here.

(Witness makes further calculation.)

A. It is 16.91.

The Master: The record will note that the sheet signed by the witness—

Q. That is your signature?

A. Yes, sir.

The Master: Under date of July 16th, gives 16.90.

Q. What did you give me for the equivalent grains per hour?

A. 120.48.

Q. Where did you get that from? Do you round out figures, or do you take the figures as you find them in the table?

A. What do you mean?

Q. If it is 48 or 49 do you make it 50 for your calculation?

A. Sometimes where there is 1 2 or over, that is, 39074
5 100, or 5 1000, we bring it up to the next place.

Q. You said it was 120.48, didn't you, according to your table?

A. According to this table it is 120.48.

Q. And that is what you used in your calculation?

A. You don't use that in your calculation, you use the log corresponding to your minutes.

Q. You don't use that as a basis, 120.48?

A. That is regarded as the candle consumption time of burning 40 grains.

Q. Didn't that enter into your subsequent calculations?

A. The time itself enters in, but the grains are 39075
just regarded as so many grains.

Q. The amount of grains burned does not enter into your calculation at all?

A. Well, it does indirectly, going back to the minute.

Q. Oh, I see what you mean.

A. As far as that difference of 1 100 is concerned, that might be in the table itself, in the third place.

Q. Where did you make your mistake when you had it 16.98?

A. In the logarithm for the minutes. I must have read it wrong. Instead of .0017 I had .0035.

39076 Sydney Straus, Direct.

Q. Do you ever go back and check up your figures when you have once put them down?

A. I generally check them up as a rule; I generally run over them hurriedly.

By Mr. Clark:

Q. Do you mean you usually do check them up?

A. Yes, sir.

Q. You run them off hurriedly and then check them off carefully?

A. No, I check them hurriedly.

39077 Mr. Clark: I offer in evidence all of the sheets made by Mr. Straus, 79th Street and Grand Street, for the years 1916 to 1919. I have not picked all of those out, it would be considerable of a job.

The Master: Well, I am wondering whether it is really necessary to have them all. I was wondering whether if you took a typical sheet it would not indicate as well as all of these sheets. Your offer is of all the sheets?

Mr. Clark: My offer is of all the sheets, because the complainant has questioned the accuracy, the Master has questioned the accuracy of the calculations. I think you opened cross-examination on all of them.

39078 Mr. Ransom: I object to the receipt of any of the sheets on the ground that they are incompetent, irrelevant and immaterial; they are not made in compliance with the statute. Some one has assumed a basis radically different from that prescribed by the statute as the test for illuminating power. It appears on the face of most of these sheets that the spermaceti was not burning at the rate of 120, but was burning at various rates ranging from 113 up to 127.

The Master: Where do you see 113?

39079

Mr. Ransom: I saw one very low. There is 127 which I have in my hand. The 113 follows from the time stated.

The Master: That is a Hirschewitz figure, 127.

Mr. Ransom: All of these appear to range away above the rate of 120, even after they have taken their true candle figure and readjusted it to the assumption of one candle burning, which is contrary to the actual method of operation. At any rate, the putting of two candles, twelve to the pound, or as near to that as these young men may cut the candles, does not involve the 39080
burning of one candle at 120, but involves the burning of two candles, with all the factors. It appears furthermore that quite generally in these tables, at least such of them as I have seen, that the candles were not of the statutory standard, because practically none of them burned, even, the two candles, at the rate of 120 grains of spermaceti per hour.

Mr. Clark: If your Honor please, all that the statute demands is that this gas be tested in a suitable manner.

Mr. Ransom: It does not say anything of the kind. 39081

The Master: It does not say anything of the sort.

Mr. Clark: It says, "Tested for illuminating power in a suitable manner with proper apparatus."

The Master: The record will note that among the exhibits offered by Major Clark, to illustrate, I have simply drawn them out of the pile, it would be impossible to take them all, there is such a tremendous number of them, but a few typical sheets, May 9, 1918, for instance, equi-

valent of grains per hour is stated to be 125. May 1, 1918, equivalent of grains per hour is stated to be 125.5. May 31, 1918, equivalent of grains per hour is stated to be 125.

Q. How much higher than 125 did you go at any time, Mr. Straus?

The Witness: I just happened to see one here 127.

The Master: The witness calls attention to one December 30, 1916, signed by him, 127 equivalents of grains per hour.

39083 Mr. Clark: Do I understand that the complainant contends that there is such a physical thing as a candle that will always actually burn 120 grains per hour?

The Master: I don't think counsel for complainant needs answer it. The trouble is we are dealing with a fool statute.

Mr. Clark: It is not a fool statute, it must be interpreted in the light of reason.

The Master: It is a fool statute.

Mr. Clark: The statute says it must be tested in a suitable manner with proper apparatus. You might just as well say that we have to have 22 candles there because it says you have to equal the light of 22 candles.

39084

The Master: Do you go much higher than 127?

The Witness: I can't recall.

The Master: You may have.

The Witness: Why, I don't think so.

The Master: Where was your limit?

The Witness: I think it was between 50 and 60, nothing higher than 60, that is, 9.40, it burns too fast.

Mr. Ransom: That is, if it burned in 9.4 minutes, you thought it was too fast?

The Witness: Yes, sir.

Mr. Ransom: That makes about 130.

The Master: And how high, 10.50

The Witness: About 10.60, between 10.50 and 10.60.

Mr. Ransom: That is about 111. I started to say that there are several statutes in different states that are reasonable and can be enforced. That is, they prescribe that tests shall be made at certain intervals, for instance, like once a week, over such period of time, and that a certain number of successive 39086
violations shall be considered as a violation of the statute. Things like that become reasonable, but here is a statute which does not have any of the requirements.

Mr. Clark: The statute, it seems to me, has all the requirements, and it says gas shall be tested in a specified manner with proper apparatus, and I think that we have proved that it has been.

Mr. Ransom: That is not in the candle power statement of what the tests shall be.

Mr. Clark: That is what the City of New York must do.

39087

Mr. Chambers: There is only one place where the test is prescribed and that is in the laws of 1905, and it says, "in a suitable manner." The other one refers to the—

Mr. Clark: Norm.

Mr. Chambers: To the quality of gas, the illuminating power of the gas and not the test.

The Master: What statute are you referring to now?

Mr. Chambers: 735 of the Laws of 1905.

The Master: 735 of 1905?

39088

Mr. Chambers: Yes.

The Master: Well, I think I have read that half a dozen times.

Mr. Chambers: Well, read it and you will find this, "It shall be tested for illuminating power in a suitable manner and by appropriate apparatus," that is all it says about tests.

Mr. Ransom: There is nothing penal about that statute.

Mr. Chambers: That is the statute relating to tests.

Mr. Ransom: It is not the statute which prescribed penalties.

39089

Mr. Chambers: Wait until I get the Master right on the law. The Law of 1905 says—

Mr. Ransom: You can't do that in a thousand years.

The Master: What do you mean, you can't get me right on the law?

Mr. Ransom: He cannot do it, he has got to get himself right first, he has got to begin at home.

Mr. Chambers: It says that there, doesn't it, Mr. Gilbert?

The Master: Of course it says that.

39090

Mr. Chambers: Now, that is the only place in the law that anybody will find anything that relates to how the gas shall be tested. Now, you turn to 1906, with which I am quite familiar, in 1906 it merely prescribed the illuminating power of gas, and does not say how it shall be tested.

The Master: Yes, and examine what?

Mr. Chambers: One cannot say one candle or anything—

The Master: Are you Mr. O'Brien or Mr. Chambers?

Mr. Chambers: Excuse me. I had not finished. I will give way.

39091

The Master: Are you finished now?

Mr. Chambers: Yes.

The Master: Chapter 735 of the Laws of 1905 is entitled, and is, "An Act to amend the Greater New York Charter relative to the inspection of illuminating gas and tests thereof." It became a law on June 3, 1905, and provides, among other things that, "The gas manufactured, furnished or sold as aforesaid," and aforesaid having reference to gas sold to the City of New York or to any consumer therein, "shall be tested with reference to illuminating power, pressure and purity in a suitable manner and by proper 39092
apparatus at least once each day, and shall also be tested whenever the said Commissioner shall direct. The inspectors shall report under oath the results of their tests to the Commissioner, and the Commissioner shall file the said reports in his office and the same shall be public records." That act took effect on the first of July, 1905. Apparently on the same day another law was passed which took effect on July 1, 1905, which had nothing to do with the charter of the City of New York, but had to do with the obligation of the gas company to provide a particular kind of gas.

39093

Mr. Chambers: That is right.

The Master: Now, Chapter 735 had nothing to do with a particular kind of gas. It had to do with the record to be kept of illuminating power, pressure and purity. There wasn't any obligation in 735 as to what the illuminating power should be.

Mr. Chambers: That is just the way I am reading it.

The Master: Or how pure it should be, or what the pressure should be.

39004

Mr. Chambers: Yes.

The Master: It had nothing to do with the Gas Company.

Mr. Chambers: Yes.

The Master: So far as that statute is concerned, the Gas Company could have delivered 16 candle power gas. The statute simply provided a department and place and had assigned a department to look at the gas and make a record of it.

Mr. Chambers: Yes.

The Master: But then what? It means nothing.

39005

Mr. Chambers: No, the two acts go together.

Mr. Ransom: You could not assume under that act—

The Master: No, you cannot read the two together at all. One is a highly penal statute, placing particular obligations on a gas company, and the other is an amendment to the Greater New York Charter, which provides for the management of the City, for its operation. Now, Chapter 736—

Mr. Chambers (interrupting): I cannot agree with that at all.

39006

The Master: Chapter 736 provides that a corporation which sells gas in the City of New York shall not charge the City more than 75 cents per thousand cubic feet, and must deliver to the City gas which shall have an illuminating power of not less than 22 sperm candles of 6 to a pound, burning at the rate of 120 grains of spermaceti per hour, tested at a distance of not less than one mile from the distributing holder, and so on.

Mr. Chambers: May I suggest to you with relation to that, that we are not interested in

39097

that one you have just read at all, in that 1905, illuminating power?

The Master: Then we come to Chapter 125 of the Laws of 1906, which was an act in relation to illuminating gas in the City of New York, and regulating the quality and pressure thereof.

Mr. Chambers: Yes, I am familiar with it.

The Master: To consumers other than the City, and providing a penalty. That was a year later, it became a law on April 3rd, 1906, and took effect on the 1st of May, 1906, and that provides that a corporation selling gas in the 39098
City of New York, in this territory under consideration, shall not charge over 80 cents, and in Section 2—

Mr. Chambers: It provides for the quality.

The Master: Provides for the quality of the gas.

Mr. Chambers: It does not say how it shall be tested, though.

The Master: Yes, the test, it says what the basis of the test shall be, "It shall have an illuminating power of not less than 22 sperm candles of 6 to a pound, burning at the rate of 120 grains of spermaceti per hour."

39099

Mr. Chambers: That is the illuminating power of gas.

The Master: "Tested at a distance not less than one mile from the distributing holder by a burner consuming five cubic feet of gas per hour, each 100 cubic feet of gas shall not contain more than five grains of ammonia and not more than 20 grains of sulphur and not more than a trace of sulphurated hydrogen." It likewise provides as to the pressure. I shall not strike out—

Mr. Chambers (interrupting): May I just say—

39100

The Master (continuing): The sworn reports that are in evidence, but I shall refuse to take these sheets prepared by the witness, which were the basis of those sworn reports, on the ground that it appears from the witness's testimony affirmatively that these conclusions—I think to be consistent I have got to strike out the sworn reports.

Mr. Chambers: May I just make a statement on the record?

The Master: Yes.

Mr. Chambers: I want to take an exception. I want to state our views here clearly, and it is this: In 1905, theretofore as I understand it, there had been no statutory regulation for the testing of gas in the City of New York, so the legislature prescribed how the gas should be tested, to all consumers of gas, all gas consumed by consumers, and they said it shall be tested as we have called your attention to in the language of the statute.

39101

Mr. Ransom: It had been tested for years.

Mr. Chambers: Judge, please do not interrupt. "Shall be tested with reference to illuminating power * * * in a suitable manner and by proper apparatus." So then we had up to that time no statute regulating the illuminating power of gas that I know of. There may have been some, but just leaving that out for the present, we had then the manner in which the gas should be tested. In the next year the legislature prescribed the illuminating quality of the gas. It had already prescribed how it should be tested, and then the next year they fixed the illuminating power of the gas, and then the chapter is completed. First we have how it shall be tested, and second we have the illuminating quality of the gas, and the

39102

39103

two together make a complete chapter so that when you are all through it says this, "The gas sold in the City of New York to consumers shall be tested in a suitable manner by a proper apparatus," and then the legislature says, "That gas must be of an illuminating quality of 22 candle power," and so forth. That is all there is to it, as we understand it. Clear as can be to me.

The Master: I am going to modify my ruling. I will let the sworn reports stay in, for what they are worth.

39104

Mr. Ransom: Exception.

The Master: Those sworn reports were made in pursuance of Chapter 735 of the Laws of 1905, and that law was complied with. It was made probably—I say it was complied with. It was probably complied with. There isn't anything in this record that would indicate that this was not the kind of an appliance referred to in Chapter 735, but I do not think I ought to take these calculation sheets. I will let the witness's testimony stand as to just how he calculated, and take the sworn reports.

39105

Mr. Chambers: Now, we have here in court all of the sheets called test sheets, showing the observed illuminating power as corrected for 1916, 1917, 1918 and 1919, in these various gases referred to in the sworn reports, and we have the witnesses here who made them, and we are prepared to offer them all in evidence. Now, if you say you won't take them, why, that completes that part of it, and we can take an exception.

The Master: I do not say I will not take others. I say I won't take this witness Straus, because he tested gas as high as 130 apparently

39106 candle power. Other witnesses may not have done it.

Mr. Ransom: You mean 130 spermaceti rate.

The Master: Yes. Other witnesses may not have done it. This witness did.

Mr. Clark: It does not appear that that was the rate, except by Mr. Ransom's testimony.

The Master: Well, it appears from the witness's own testimony it went as high as 127, and I think calculation shows somewhat higher, but at least 127, because the witness himself pointed out a sheet in December, 1916, where it was

39107 127.

Mr. Chambers: That would not be contrary—

Mr. Clark (interrupting): It has not been proven that that is unreasonable.

Mr. Chambers: That would not be contrary to the statute.

The Master: I have made my ruling about Mr. Straus, and you have your exception, and I will not take the test sheets of Mr. Straus, because of his testimony which is on the record. Now, if you have another witness you want to make an offer from, call him.

Mr. Chambers: Well, it appears that they

39108 are here and we offer them.

The Master: Yes, and I have rejected all the test sheets of this witness.

Mr. Chambers: Clear back to 1912?

The Master: Yes. Well, I would not take them back of 1916 and 1917, in any event.

Mr. Clark: I offer all those made by Mr. Straus in which the tests do not exceed 125 or go under 115.

The Master: Objection sustained.

Mr. Clark: Exception. I offer all the tests made by Mr. Straus in which the tests do not exceed 124 and do not go under 116.

39109

The Master: You have no objection to that?

Mr. Ransom: I do object to it.

The Master: Objection sustained.

Mr. Ransom: I object to all of them.

Mr. Clark: Exception.

Mr. Chambers: Exception.

Mr. Clark: I offer all the test sheets made by Mr. Straus, in which the grains per hour do not exceed 124, and do not go under 115.

The Master: Major Clark, there is no use repeating this as to different figures. If you have anywhere the grains consumed were 120, I will take them.

39110

Mr. Clark: Only those? You rule out all that are not exactly 120?

The Master: Yes.

Mr. Clark: I offer all those that are here in which the grains are shown to be 120.

The Master: Well, let us have them.

Mr. Ransom: I object to those.

Mr. Clark: That will be some job to pick them out.

The Master: You find some and I will take them, exactly 120. Designate somebody to hunt for those sheets, and in the meantime get another witness.

39111

CROSS-EXAMINATION BY MR. RANSOM:

Mr. Ransom: I would like to have one or two of those sheets.

Q. You cut these long candles in two, do you not?

A. Yes, sir.

Q. What do you use to cut them?

A. A knife.

Mr. Ransom: May I see your computation sheet.

The Witness: Yes (handing paper).

Mr. Ransom: I offer the witness's computation sheet in evidence.

Mr. Chambers: There is just one little thing about this exhibit—Mr. Straus, is this exhibit—

Mr. Ransom: I object to Mr. Chambers' interruption.

The Master: Objection sustained.

Mr. Chambers: I object to it on the ground that now you cannot tell, the way it appears there, where he checked up, there was some error in his first computation, and you cannot tell what

39113 result he had there.

The Master: Objection overruled. The record shows what the result of it was.

Paper marked Complainant's Exhibit 408.

Q. Does this drawing show the apparatus at 79th Street?

Mr. O'Brien: We want to have that picture in silhouette instead of diagram.

The Master: The witness will answer the question, is that a picture of the machine, or a drawing of it?

Mr. O'Brien: I object to the question as not being definite, incompetent, irrelevant and immaterial.

39114

The Master: Objection overruled.

A. As far as I remember.

Mr. Clark: I object. This witness has never been stationed at 79th Street.

The Witness: It was a long time ago.

The Master: You have been in 79th Street, you made some tests in 79th Street.

The Witness: Some time ago.

The Master: Yes. Well, do you remember whether that is the kind of an instrument?

Mr. Chambers: Well, you mean a drawing of the very machine he looked at?

The Master: Is that substantially—

The Witness: It is similar to the one at 79th Street.

The Master: How does it compare with Grand Street? Is your memory any better on Grand Street?

The Witness: It is practically the same as at Grand Street, except you haven't got a mantle here.

Mr. Ransom: I was going to be fair with the witness. The drawing shows instead of a flat-flame burner what you would regard as an Argard 39116
burner, or mantle. That is correct, isn't it?

The Witness: Yes.

Q. And this drawing shows one candle on the candle balance instead of two?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial, and as involving a conclusion. The paper handed to the witness is not a drawing, but a photograph taken from some sample list.

The Master: Objection overruled.

Mr. O'Brien: And it has neither dimensions, or—it hasn't any of the details that would go with an exact representation of a machine of delicate 39117
detail.

Mr. Chambers: I object further on the ground that it is not yet offered in evidence, and you cannot tell, as I look at it, whether it has got one or two candles.

Mr. Ransom: I will admit that.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. If there are two candles on this machine they are absolutely parallel, so that only one shows, is that true?

Mr. O'Brien: I am going to ask that Judge Ransom take his seat.

The Master: And I will ask Judge O'Brien to take his seat, and Judge Chambers and Judge Clark.

Mr. O'Brien: I do not think if the witness can—if counsel can show him that paper without yelling in his ear, poking his Dr. Munyon finger in his face—

The Master (interrupting): Take your seat. Answer the question.

39119 The Witness: The arrangement of the apparatus at Grand Street is a little different, the candle balance is over here, and—

Mr. O'Brien: It is impossible for me to see where they have got their fingers from this end of the table, your Honor.

The Master: Well, then, that is your fault.

Mr. O'Brien: Do you insist on my staying here?

The Master: Yes.

Q. You say that the candle balance is at the left side of this delineation?

A. Left side.

39120 Mr. O'Brien: I did not hear the last three words of that, your Honor.

The Master: He said the candle balance is on the left side of the picture.

Mr. O'Brien: He said something about delineation.

Q. Under the use of two candles, the two candles are put parallel on the candle balance?

A. Not parallel. They are at angles. The candles are in plumb with the plumbs, that is, in line with the plumb bobs.

Q. By plumb bobs, you mean these hanging cords or wires, to which weights are attached?

A. Yes, sir.

Q. And the candles are aligned with it, with the plumb bobs?

A. With the plumb bobs.

Q. But both candles are put on the same candle balance?

A. Yes, sir.

Mr. Ransom: I offer in evidence the delineation.

The Master: I do not think we better take 39122
that.

Mr. Chambers: I object to it on the ground that it is only confusing.

The Master: Objection sustained.

Mr. Clark: It is an antiquated design.

Mr. Chambers: Photograph the modern machine.

Mr. Ransom: This is the American Meter Machine.

The Master: It is not precisely what they use at Grand Street. I will keep it out.

Mr. Ransom: That is all.

RE-DIRECT EXAMINATION BY MR. CLARK: 39123

Q. Does the cutting candles in two affect the rate at which they burn spermaceti?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Clark: Exception. That is all at this time. As soon as I find some of those 120, I will offer them.

The Master: You won't need him.

Mr. Chambers: No.

The Master: We know his signature. Next witness.

SAMUEL HIRSCHEWITZ recalled.

DIRECT-EXAMINATION BY MR. CLARK:

Q. Mr. Hirschewitz, I show you certain test sheets signed by you made at 79th Street in the year 1918, and ask you whether they were made by you on the dates indicated, whether the tests recorded there were made by you on the dates indicated?

A. I see some sheets signed by other persons.

The Master: He is just pointing to those signed by you.

391.25 The Witness: They were signed by me as a result of tests made.

Q. Will you tell just how you arrived at each of the figures on these sheets?

The Master: I think he has covered that already, hasn't he?

Mr. Ransom: He fully covered it when he was on the stand before.

Mr. Clark: He has not shown the tables he used.

The Master: You can identify the tables that he used.

Mr. Ransom: I will admit that he used the

391.26 same tables.

The Witness: I used for the logarithms—

Q. What table did you use to find the equivalent to grains per hour?

A. The tables supplied by the department, which was a copy of the one—I was told to copy the one down at Grand Street.

Q. Is it like one of these tables (handing table)? Pick out which one it is?

A. The table used for finding the grains per hour is a table similar to this one.

Q. That is Exhibit AA-438. The barometer reading, you took from the barometer in the room?

A. Yes, sir.

Q. And the temperature of the gas from the—

A. Temperature on the meter, on the photometer.

Q. The meter was regulated so that the gas was consumed at the rate of five cubic feet per hour?

A. It was.

Q. The tests made here were taken a minute apart?

A. The readings were taken a minute apart. That is, the first two readings were taken at the first minute, and the tenth reading was taken at the end of the 39128
ninth minute. All the readings were taken a minute apart.

Q. Did you use two candles?

A. I used one candle, for a time I used two candles, and then when I could get a long candle, I used a long candle, and cut it in half.

Q. Did that affect the number of grains of spermaceti used?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Clark: Exception. You obtained the figure of the average of observations by adding those figures of the observations together and 39129
dividing by 10?

The Witness: I did.

Q. And the observed illuminating power is obtained by multiplying that figure or average by 2?

A. It is.

Q. Do you ever remember having a log correction for gas?

A. A log correction for gas, no, sir.

Q. Or log correction for candles?

A. Yes, sir.

Q. That was made from what table?

39130 Samuel Hirschewitz, Direct.

A. The log correction for candles was made from the table mentioned before.

Q. Exhibit AA-438, the log correction of barometer?

A. Was made from a table similar to this (handing paper).

Q. That is Exhibit AA-439. And the correction for temperature was made from tables similar to AA-440?

A. Yes, sir.

Q. Then to calculate the corrected illuminating
39131 power, you used this logarithmic table?

A. I used the logarithmic table for the number of the observed candle power, and used a previously prepared table of logarithmetic corrections for the corrections in temperature, barometer and sperm consumed.

Q. That is to reduce the final figure to corrected illuminating power, you used this table here (handing)?

A. The ordinary logarithmetic table, yes.

The Master: What is the point of getting the spermaceti grains per hour? What is the idea? Why is that necessary?

The Witness: In order to make a correction,
39132 if you are burning your candles at a rate above the required, you are getting a larger flame, and your standard is larger than they require.

The Master: I see.

The Witness: Therefore, the observed candle power will be lower, and, therefore, the correction is made in order to bring the observed candle power up to the required power which it would be were the candles burning exactly 120 grains per hour.

The Master: Well, what I have not got quite clear in my mind is this: If the candles are burn-

ing at the rate of 125 grains per hour, does that give you a brighter flame?

The Witness: Yes, that gives you a lower flame.

The Master: That gives you a lower flame?

The Witness: Yes, sir, because if they were burning at the rate of 125 grains per hour they would give you a larger flame.

The Master: And a lower candle power?

The Witness: A lower observed candle power than would prevail were they burning at 120, because your standard is larger than called for. 39134

The Master: Well, now, how high did you go, what was your limit on grains per hour?

The Witness: Why, the limit would be—the limit ordinarily that ought to prevail in ordinary conditions, and ordinary temperatures—

The Master: What was your limit of grains per hour?

The Witness: Well, when they went—the limit as a test, 125 and 116.

The Master: You went that limit?

The Witness: Yes, sir.

The Master: You never went above 125?

The Witness: Under certain conditions it was necessary to go above that in order to get a test. 39135

The Master: What conditions?

The Witness: The conditions of temperature and conditions of the candles themselves.

The Master: What conditions of temperature?

The Witness: Why, you might, on testing at certain times of the day, the room might have been exposed to a very high temperature, and then you simply could not get the candles to burn right.

The Master: Well, what do you mean?

The Witness: A candle ordinarily that would burn within the limit, under extraordinary conditions, at very high temperatures or very low temperatures, would burn differently.

The Master: What is a very high temperature?

The Witness: Why, a temperature of 80.

Mr. Ransom: Do you mean gas or room?

Mr. Chambers: Room.

The Master: The room, he said.

39137 The Witness: Well, the temperature of the gas and the temperature of the room.

The Master: I see one here on June 26, 1918, where the temperature of the gas was 74.

The Witness: Yes.

The Master: Now, how high do you think you went on equivalent grains per hour used?

The Witness: It would depend on the candles themselves.

The Master: Well, what factor in the candle? That is, I have got to know something about it. How can I tell what the candle should or should not have done?

39138 The Witness: What the candle should or should not have done?

The Master: Yes.

The Witness: Well, now, the candle should have burned within the limits.

The Master: Yes.

The Witness: But perhaps because of faulty manufacture, or perhaps because of barometric conditions—

The Master: Suppose the barometric condition was 30 inches.

The Witness: Then—

The Master: And the temperature of the gas was 74, what ought it to have been?

The Witness: Why, it should burn within 125.

The Master: I see this one here was 126.3.

The Witness: That is possible.

The Master: Do you go much beyond that?

The Witness: Not very much beyond it, no.

The Master: Do you go 127?

The Witness: I do not remember ever going to 127.

The Master: I show you June 28, 1918, 75 39140
degrees temperature, you went to 127.

The Witness: Possibly.

Mr. Ransom: July 26, 1918, also they went up.

The Witness: Possibly, but I do not believe you will find many of them.

The Master: Do you recall any report that you ever made where the candles are tested from 120?

The Witness: Yes, we were going over the books and I found a few of them where—

The Master: Found only a few of them?

The Witness: I had only gone over a few 39141
pages.

By Mr. Clark:

Q. Isn't it very infrequent that a candle will burn exactly 120 grains per hour?

Mr. Ransom: Objected to as immaterial. I will withdraw the objection.

The Master: Objection withdrawn.

Mr. Clark: The objection is what?

The Master: Withdrawn.

The Witness: The chances of a candle burning at exactly 120 is about the same as a candle

burning at 127. In fact, I think the chances are greater that a candle will burn at exactly 120 grains per hour than it will burn above the limit.

Q. Well, do you remember many occasions when candles did burn exactly 120?

A. I cannot place the dates. I remember on occasions they did.

Q. Well, could you say whether they were frequent or infrequent?

A. They are not very frequent.

Q. Not frequent. The candles vary slightly either

39143 below or above that.

Mr. Ransom: Objected to as incompetent.

The Master: Objection overruled.

Mr. Ransom: The papers speak for themselves.

A. They vary both above and below.

Q. The number of grains that is burned to a candle is affected by the temperature?

A. Affected by the temperature, and it is affected by the barometric condition, and affected by atmospheric condition.

Q. No two candles burn precisely alike?

A. Well, there is no way of telling whether they

39144 burn precisely alike or not. There is no way of testing one candle against the other except in this sense, from time to time you take the same gas and take a different pair of candles from a different box, in order to determine whether the candles are standard, and I do not remember an occasion when we found any great variation.

Q. There was slight variation only?

A. There may have been a slight variation.

The Master: Well, do I understand your testimony to be that this is all reduced to the basis of 120 grains per hour?

The Witness: That is correct.

The Master: What was the number of sperm in the candles that you used, do you know?

The Witness: The number of sperm?

The Master: Yes. The statute speaks of illuminating power of not less than 22 candles. Oh, I see, spermaceti 120 grains. I am going to reverse myself on that Straus ruling. I will receive those Straus figures.

Mr. Ransom: That is over the objection previously entered?

The Witness: Yes. 39146

Mr. Ransom: Exception.

The Master: Now, the 1916, Straus calculations will be received as Exhibit AA-452, for the Grand Street station; 1917, for Grand Street station will be AA-453; 1918, for Grand Street station will be AA-454; 1919, for Grand Street station will be AA-455; the calculations for 79th Street station for 1916, will be AA-456; 1917, will be AA-457; 1918, will be AA-458 and 1919, will be AA-459. Now, those same exhibit numbers will reach to the calculations of the other witnesses for those stations for those years.

Mr. Ransom: Let me see them. 39147

Mr. Chambers: Well, which year? They are all mixed up.

The Master: Here are some of Straus' here.

Mr. Ransom: Most of them are Hirschwitz"s.

The Master: They are all mixed up here, all through here during the years.

Mr. Ransom: Well, I want to see the package you gave Mr. Straus.

Mr. Clark: These are the ones here.

The Master: They were mixed up right in here.

Mr. Ransom: Where are 1918? This is likely to prolong this case longer than opening up for 1919.

The Master: I think I have got it all right.

Mr. Ransom: Well, we will have to meet it.

Mr. Clark: I offer all of Mr. Hirschewitz's for the years 1916 to 1919.

The Master: I take it that Judge Ransom interposes the same objection to Hirschewitz's calculations as he did to the Straus calculations?

Mr. Ransom: Yes.

39149 The Master: They will be received in evidence, taking the same exhibit numbers for the same years and for the respective stations that the Straus exhibits have.

By Mr. Clark:

Q. Then, as to these sheets from 1916 to 1919, which bear your name, which are here in court, you would testify that you had signed them and that they are accurate representations of the tests made and the observations made?

A. I do.

Mr. Ransom: I also object specifically to 1916, on the ground that it is quite outside any issue in

39150 this case, too remote.

The Master: Not if I limit my ruling to the sworn reports for 1917—or did I let you go back to 1916?

Mr. Chambers: 1916 are in evidence.

The Master: All right, I will stand by that.

Mr. Ransom: Exception.

The Master: I will leave that in.

Mr. Clark: I also offer those for Mr. Straus and Mr. Hirschewitz for the years 1912 to 1915.

Mr. Ransom: Objected to.

The Master: Objection sustained on the ground that it is simply encumbering the record.

Mr. Clark: Exception. Your witness.

CROSS-EXAMINATION BY MR. RANSOM:

Mr. Ransom: I am trying to find the test sheet which I had here a moment ago made by Mr. Hirschewitz on July 6, 1918.

Mr. Chambers: Here is one made by him on July 6, is that the one, or is it the other station?

Mr. Ransom: I think so. No, that is not it. No questions. I would like to ask Mr. Straus a question, in view of that ruling. 39152

SYDNEY STRAUS recalled:

CROSS-EXAMINATION BY MR. RANSOM:

Mr. Ransom: I suppose the defendants will furnish us with a copy of these tables used by the City?

Mr. Clark: The tables?

Mr. Ransom: Yes.

Mr. Clark: Yes, I can get you a table.

Mr. Ransom: Today? 39153

Mr. Clark: I don't know.

Mr. Chambers: You mean including the book?

Mr. Ransom: I do not care about the logarithmic table, I assume it is a standard logarithmic table.

The Master: Have you got any extra copies of those?

Mr. Ransom: Oh, we have got logarithmic tables.

Mr. Clark: I have some extra typewritten copies, yes.

39154

The Master: Well, why not telephone down and have some sent right up. Send Mr. Hirschowitz down.

Mr. Ransom: Now, all of these candle power tests that have been put in, we have not had any copies of them, and have not had any tabulation of what they involve. I suppose that means several days of checking, at least.

Mr. Chambers: If I had copies here, I for one, would give them to you now.

Mr. Clark: So would I.

Mr. Chambers: Be glad to.

39155 Mr. Ransom: Mr. Chambers is always generous with something he hasn't got.

Mr. Clark: Maybe that is the only thing he can be generous with. That is my case.

Mr. Ransom: I believe that we ought to have copies of these sworn reports.

The Master: No. Counsel have tabulations prepared, and I am going to insist on their putting in those tabulations.

Mr. Clark: I have tabulations only for 1918.

The Master: Well, you furnish them.

Mr. Ransom: Tabulations I think for other years.

39156 The Master: I cannot make them do that. I knew they had some tabulations here, and they indicated that they did not want to put them in, but I will require them to put them in.

Mr. Clark: I did not indicate I did not want to put them in.

Mr. Ransom: The only thing I can do then is to put a force of men on these things to check them up.

The Master: That is all you can do.

Mr. Ransom: And I say your Honor has added more to the length of this case this morning than by taking 1919 and 1920 together.

The Master: I think I have got to take it.

Mr. Ransom: Exception.

Q. Mr. Straus, I notice on your computation of July 6th, at Grand Street, you note a variance in candle power of 8.3 in the first minute to 8.8 in the last minute, is that correct?

A. Yes, sir.

Q. A difference in the maximum and minimum of a candle power?

A. That is 5/10, 3/10 to 8/10.

Q. Yes, but multiplying it by 2?

A. Yes, it would be "1." 39158

Q. That may have been due to a difference in your perception in vision?

A. I do not think that. I think more so to the candles themselves.

Q. To the candles?

A. Yes.

Q. You do not think your eyes became watery during that time?

A. No, sir.

Mr. Ransom: That is all.

39159

GEORGE J. ELSASSER recalled.

DIRECT-EXAMINATION BY MR. CLARK:

Mr. Ransom: While we are checking these things, I suppose the defendants might use the time to check up the 1919 stuff.

The Master: Well, you gave it to them a long while ago.

Mr. Ransom: Yes.

The Master: And I will assume they have checked it, if they have not it is their own fault,

39160

I won't give them any more time for that. The trouble is that they call witnesses and analyze and segregate and subdivide and criticise and cross-examine and—why is it necessary to do more, so far as you are concerned, than to have these tables calculated out—

Mr. Ransom: Why, they are full of errors, these things, right on their face.

The Master: And take a typical number of reports from each man, or calculations showing enough to develop your point that they are unreliable, and why is it necessary to do more than

39161 that?

Mr. Ransom: Well, your Honor has received them.

The Master: Yes.

Mr. Ransom: And some other Court may not take the same view, and if they are proof of anything—

The Master: But if you show by a fair number of instances, showing the errors and calculations, that they are unreliable, how can any Court accept the balance of them? The chain is no stronger than its weakest link.

Mr. Ransom: We have got to go over con-

39162 ditions from 1916, to date.

The Master: I should take simply typical dates, I think.

Mr. Ransom: You might have some Court take the view, which I do not believe personally they would, that we have to explain and excuse, then we would have to cover all these things.

The Master: I think the Circuit Court of Appeals in deciding the Brooklyn Union case—

Mr. Ransom: It was not the Circuit Court of Appeals.

The Master: It was the three judges

39163

Mr. Ransom. No, it was the two Judges of the District and one Judge of the Circuit Court of Appeals.

The Master: They were sitting as a Circuit Court.

Mr. Ransom: No, they were sitting as a Special Statutory Court.

The Master: Well, the three judges who decided the Brooklyn Union Gas case seemed to be of opinion that evidence of this character was not sufficient to throw a complainant company out of court unless the Master could find that it was done with intent to defraud, and was done 39164
deliberately. Now, that puts a good deal of a burden on the defendants, to show a deliberate situation, especially during the war period where these judges assigned substantially the same reason to disregard it as I did a long while ago, namely, war conditions prevented—

Mr. Chambers: We will have something to say on that later.

The Master: Go ahead.

Mr. Chambers: I do not agree that we have to show fraud at all in a Court of Equity.

Mr. Ransom: Well, perhaps we will save time, I am willing to stipulate that all of these 39165
men who have been on the stand if they are recalled to the stand, will testify in the manner which has been previously testified to by them, that they made up observations and notations and which are recorded on these different sheets, that they will testify that these tests and observations were correct to the best of their knowledge and ability under the method followed, without the calling of each of them to the stand.

Mr. Clark: And they will testify that they used the same tables and made the calculations.

39166

Mr. Ransom: Yes.

Mr. Clark: In the same way as the last two witnesses?

The Master: Yes. I do not think there is anything hidden, that I can find, in the stipulation, but it is intended to save time.

Mr. Clark: Yes.

The Master: And I will take it in the sense that it is intended to be made. Now, that being so, you need not call another witness, you can offer the test sheets of the witnesses Elsasser and Frank and Hillig and Wacker.

39167 Mr. Clark: And Birdsley?

The Master: Well, Birdsley did not testify to any.

Mr. Ransom: Two.

Mr. Clark: He has made several test sheets. Quite a lot of them distributed through here.

The Master: Well, do you want to include Birdsley?

Mr. Ransom: I am willing to include Birdsley.

The Master: And Mr. Birdsley, for the years 1916, to 1919, inclusive for the Grand Street and 79th Street stations. The objection is now made to the offer of these papers by Judge Ransom, on the same grounds stated when the witnesses were produced, namely, Straus and Hirschewitz, as to the competency, relevancy and materiality of these documents.

39168

Mr. Ransom: And to the inclusion of 1916 and 1917.

The Master: And 1917. Those objections are overruled, and the calculations of those various witnesses for those two stations, will be received under the exhibit numbers which I have given for those two stations for the respective years specified.

39160

Mr. Clark: I also offer 1912 to 1915, for the same witnesses.

The Master: That offer is refused, objection sustained.

Mr. Clark: Exception.

The Master: Now, who prepared this tabulation?

Mr. Clark: Mr. Birdsley.

The Master: Well, call Mr. Birdsley, and let him prove the tabulations.

Mr. Chambers: May I state that from my silence I do not want to be understood as acquiescing in any way in your ruling that the de- 39170
fendants have to show fraud.

The Master: I did not know you were silent; I thought I heard you objecting very strenuously when I said that.

Mr. Chambers: I am sure we do not have to show that.

The Master: Putting it in a little different way, unless the Master can find that the complainant company did not even try to comply with the statute, did not make an honest effort to supply the gas so that it would test in that way, I do not think a Court of Equity is going to throw anybody out of court. 39171

Mr. Chambers: We tried to show you the other day that they had a way of putting different gas through these testing stations than they did out on the district, and you would not take that.

The Master: No, not the way you were showing it. Proceed, Major Clark.

WILLIAM BIRDSLEY recalled.

DIRECT-EXAMINATION BY MR. CLARK:

Q. Mr. Birdsley, I show you a set of tabulations, one for each month for the year 1918, and ask you what they purport to show?

The Master: What, are there twelve of them here?

Mr. Clark: Yes, each one of them having two or three sheets.

The Master: I remember why I did not think
39173 these would be of any use.

A. These tabulations purport to show examinations of illuminating gas made by the department of water supply on gases designated as "Consolidated" Branch 1, Branch 2, Branch 3, "Mutual" and "New Amsterdam" at the photometric station, 122 Bowery. They represent the tests made, the time when the tests were made, and the date of the month.

By the Master:

Q. It is taken from what?

A. These were taken from our record books.

Q. Where are the record books taken from?

A. The record books are the books in which we
39174 make the office entries from the test sheets.

Q. Who knows that they are right?

A. Each inspector would.

Q. Who checked those, anyhow?

A. Mr. Straus and Mr. Hirschewitz checked these

By Mr. Clark:

Q. Under your direction?

A. Under my direction.

The Master: Then you better get them here. What we want is the man who will swear that they are right.

Mr. Clark: They were checked under his direction to these record books.

39175

The Master: I will take them for the convenience of the Master. They are supposed to be summaries of this testimony, are they?

Mr. Clark: Yes.

Mr. Chambers: For this year.

Mr. Clark: 1918.

Mr. Ransom: Are there others to be offered? I object to them being received for convenience, merely for a solitary year.

The Master: I will take them.

Mr. Ransom: Exception.

The Master: I will take them subject to correction.

39176

Mr. Ransom: Summaries are not proof of anything.

The Master: They cannot be proof of anything, they are simply summaries prepared under Mr. Birdsley's direction, and I will take them as one exhibit.

Mr. Ransom: I call upon the defendants to at least furnish, if they do not furnish copies of these exhibits, tabulations of what they have put in.

The Master: Give Judge Ransom copies of this material that I have.

Mr. Ransom: I mean as to other years.

39177

The Master: Wait until I get through with this.

Marked Defendants' Exhibit AA-460.

The Master: What are all these other tabulations you have there?

Mr. Clark: They are copies.

Mr. Chambers: There are different stations, you know.

The Master: 79th Street, I see.

39178 William Birdsley, Direct.

Q. I show you these sheets (handing witness). Are these similar tabulations?

A. Yes, this is a tabulation made in a similar manner and represents the tests made for all the various months of 1918, at our photometric station at 79th Street.

Q. There is one series for each month?

A. One series for each month, six copies.

Q. And a page for each branch tested?

A. Yes.

The Master: These will be marked Defend-
39179 ants' Exhibit AA-461.

Mr. Ransom: I object to the receipt of those as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-461.

The Master: How long will it take to make copies of these?

The Witness: I have no stenographer myself. These tabulations were made at the Law Department, and they took about three days to make those.

Mr. Ransom: We have had to work nights and
39180 Sundays and all hours.

The Master: I shall direct counsel to proceed forthwith to prepare tabulations for the convenience of the Master. I cannot check all these things up. Have a number of copies made right away.

Mr. Chambers: How long did the others take?

The Master: I do not care how long it took; I want it done. If you want 1916 and 1917 also in there I want to have them.

Mr. Ransom: And 1919.

The Master: And 1919. I want the tabulations for my convenience, and I want them prepared right away. Have you 1919 prepared?

The Witness: No, sir.

The Master: 1916, 1917 and 1919 I want similar tabulations prepared.

Mr. Ransom: How about these so-called observed candle power sheets?

The Master: I do not think I will make any direction on that.

Mr. Ransom: We will have to do it ourselves.

The Master: I won't do it, that is all. 39182

Mr. Ransom: Where can we get at these things?

The Master: Stay right here.

Mr. Clark: Do you want to keep those here?

The Master: Yes.

Mr. Chambers: Do you mean the observed?

The Master: Yes, all of these exhibits except the exhibits that they need for copying, which they will take downtown. The others will stay here.

Mr. Clark: It will save a good deal of time to take these right from the books as the others were done.

39183

The Master: The observed?

Mr. Clark: No, not the observed, but these tabulations which are made from the books.

The Master: That is what I want, the observed. The observed I want left here. I want tabulations of the others.

Mr. Ransom: We want to check these things. These are not even made up from the exhibits, these tabulations just received; they are tabulations made up from some books into which somebody has copied something.

The Master: The 1918 you do not need to tabulate just now, we have got that tabulation.

39184

Leave the 1918 sworn reports here and leave all of the observed sheets here. Take 1916, 1917 and 1919 sworn reports with you and get them back as soon as possible with the tabulations.

Mr. Clark: I will offer in evidence the books.

The Master: You will leave the books here, too.

Mr. Clark: That is what we make the tabulations from.

The Master: Then you won't need the sworn reports.

Mr. Clark: No.

39185 The Master: All right, then, leave the sworn reports and all of the test sheets here. They will be in the custody of the Master and the Master in turn will depute Judge Ransom to take care of them for him for the time being.

Mr. Chambers: You do not mind if they are removed from the table.

The Master: No, get them over on the side somewhere, Judge Ransom, you will be custodian of the Court of these things for the time being.

Mr. Chambers: As to these tabulations, they were made from the books, and, really, we did not care whether they were in evidence or not.

39186 The Master: What about it now?

Mr. Ransom: They are afraid of them now.

Mr. Chambers: No, I want to have our proofs correct. The books are not in evidence and these are made from the books.

The Master: I am simply taking them as tabulations subject to errors and omissions.

Mr. Chambers: And for your own convenience; that is what I understood.

The Master: They do not prove anything. They are only for my convenience.

Mr. Chambers: That makes it all right, then.

39187

Mr. Ransom: And you do not claim there is any one could tabulate them accurately.

Mr. Chambers: Oh, yes, from the books.

The Master: Get all official reports and tes sheets over on the side.

Mr. Ransom: Well, may I take them to another room where I can put a man to work on them?

The Master: Yes, that is what I want you to do.

Mr. Chambers: I wish you would cross-examine Mr. Silverman.

The Master: I want Dr. Bemis finished now. I am going to run this thing a little myself now.

39188

Mr. Chambers: That may take some time. I have to get Mr. Silverman out of here.

Mr. O'Brien: I think that with the limitations made last night with respect to that table of Dr. Bemis, I will offer it. It cannot be made, under the statement made by counsel for the complainant, the basis of any claim that it has been in any respect testimony offered as to the balance of the year 1919.

The Master: The record is perfectly clear.

Mr. O'Brien: I assume from what Judge Ransom says he is not going to assert that as the basis of any claim.

39189

The Master: You want to offer the vouchers first?

Mr. Ransom: The statement I made speaks for itself; I shall not urge that as a reason.

Mr. O'Brien: You are waiving that as a reason, is that so?

Mr. Ransom: The record is perfectly clear.

The Master: I will not open this case on the theory of rebutting this by showing the balance of 1919. If I open it at all it will be under the equity power of the Court to take a full case.

39190 Edward W. Bemis, Direct.

Mr. Ransom: And we, of course, say we may do it as matter of right.

The Master: You are offering Voucher No. 6541 and Voucher No. 6567, are you?

Mr. O'Brien: Yes.

The Master: Both of these vouchers being December 31, 1919, vouchers.

Voucher No. 6941 marked Defendants' Exhibit AA-462, Voucher No. 6567 marked Defendants' Exhibit AA-463.

39191

EDWARD W. BEMIS resumed the stand:

DIRECT-EXAMINATION CONTINUED BY MR. O'BRIEN:

Q. Dr. Bemis, you have made an examination of Vouchers 6567 and 6541?

A. I have.

Q. Which have just been received in evidence as admissions made by the complainant?

Mr. Ransom: I object to the question as asked.

The Master: I will sustain it. He has looked at the Voucher 6567 and Voucher 6541.

39192 Mr. O'Brien: Before I come to that, your Honor, I assume I did it last night but if I did not I make the offer of these vouchers as admissions or concessions against interest.

The Master: That is all right.

Mr. O'Brien: Without assenting to the correctness or reasonableness or the justice of the payments made.

The Master: You have offered them as admissions against interest. Now your question is whether Dr. Bemis has looked at them.

Mr. Ransom: Of course we object to any limitation.

The Master: I have not said anything about a limitation; I have received them with all that the offer carries with it.

Q. You have examined them, Dr. Bemis.

A. I have.

Q. Have you set forth the results of your analysis on Sheet No. 5?

A. Yes.

By the Master:

Q. Just to make it clear, Sheets 1, 2 and 3 are photostatic copies of these two vouchers; is that correct?

A. That is true. 39194

Q. And what is Sheet 4?

A. Sheet 4 applies to 1918, the same analysis, and Sheet 5 is some conclusions of mine.

Q. It is a statement of your conclusions?

A. Yes.

The Master: It will be noted that the exhibit includes photostatic copies of these Vouchers 6567 and 6541.

Mr. Ransom: Not photostatic copies.

The Master: No, blueprint copies. They are figures taken from these vouchers.

Mr. Ransom: They are not copies of the vouchers; they have taken off certain figures from the vouchers. 39195

The Master: Yes, that is correct.

Q. Let us get this perfectly clear. On the top of page 1 appears "Voucher 6567, Paid 1-14-20, By check 44779," and on page 3 appears, "Voucher 6541, Paid 1-16-20, By check 44839." These are not photostatic copies of those vouchers.

The Witness: Not exactly.

Q. And they are not blueprint copies of those vouchers?

A. Not exactly.

Q. They are literally copies of those vouchers?

A. Copies of those vouchers.

Q. You have taken figures off these vouchers and put them on typewritten sheets?

A. Yes.

Q. And had those typewritten sheets blueprinted?

A. That is right.

Q. The figures you show here are the figures you took from these vouchers, the numbers of which are given at the top of the pages?

A. That is right.

39107 The Master: Do you offer this as an exhibit?

Mr. O'Brien: I offer the whole thing as being Dr. Bemis' analysis of the vouchers in question and the deductions which he has made from that analysis. Before it is offered I will ask a question.

By Mr. O'Brien:

Q. Doctor, is the conclusion which you have set forth on page 5 of this paper your judgment as to the items referred to therein?

Mr. Ransom: Objected to as incompetent.

A. It is.

Mr. Ransom: I would like to have that objec-

39108 tion passed on.

The Master: Overruled.

Mr. Ransom: Exception.

By the Master:

Q. What is this extra page you are putting on here?

A. I have been asked by the Master as to an extra page. I had a similar page prepared for 1919, but at first I thought I would omit it. It is a natural sequel to the 1918.

Q. In other words, you have got pages 4 and 4-a?

A. Yes, I will give Judge Ransom that page 4-a, it is the same thing applied to 1919.

39199

The Master: Now, you make the offer consisting, really of six sheets, there being two sheets 4 and 4-a, Mr. O'Brien?

Mr. O'Brien: That is right.

Mr. Ransom: I object to the sheets 4 and 4-a as artificial and arbitrary divisions, and I object to sheet 5 on the ground the witness there undertakes to do a variety of things which he is in no way qualified to do, questions which under the decisions of the Courts are for the determination of the Court and on which the witness is not qualified to give expert opinion. He undertakes to reduce a 6% figure to 2%, and states the conclusion that 39200
the other 4% or—I do not really know what he has done there. He says, "Of the 12%, 6% is for return on the investment, and 6% for taxes, depreciation and contingencies. This 6%"—I assume he means return on the investment—"should not exceed 2%. The other 4%, or 1/3 of the 12% rental, should be deducted in reaching a fair rental." He is not qualified to pass on the fair rental of these facilities.

The Master: I will take the statement.

Mr. Ransom: On what ground does your Honor think he is qualified to pass on the question of what is a fair rental for facilities of this 39201
kind in the City of New York?

The Master: I will take it.

Mr. Ransom: Exception. And how is he qualified to pass on taxes and contingencies not exceeding 2%. Taxes is something which is imposed upon these defendants.

The Master: I am going to take his testimony. I may reject it when I analyze it, but I am taking it for the time being.

Mr. Ransom: Exception. It simply imposes upon us the necessity of a protracted cross-exami-

39202

nation on a matter on which he is wholly incompetent.

Marked Defendants' Exhibit AA-464.

The Master: Anything else for Dr. Bemis?

Mr. O'Brien: Nothing further, your Honor.

The Master: That is all that you expect to prove by Dr. Bemis?

Mr. O'Brien: That is all. If there be some matters before the close of the case that I desire to recall him on, other than tables—

The Master: Is it your statement now that so far as you know you have exhausted the direct

39203 testimony that you intend to give by Dr. Bemis?

Mr. O'Brien: That is substantially correct. There may be, as I say, some matters that I might take up that have not been covered.

The Master: That is what I want to get.

Mr. O'Brien: But in which event I will ask your permission to put him back on the stand.

The Master: I do not want to be put in the position of refusing to let you recall someone who is essential to the case. At the same time I want to keep this case in order now and get through with it. Have you anything in your mind that you expect to call him for?

39204 Mr. O'Brien: I will say this: There are two or three subjects that I have not yet made up my mind as to whether or not I will call him on. That depends on several different contingencies. They are not matters, however, the introduction of which will entail any analysis or investigation on the part of the complainant's counsel. I mean to say they are put in possession now of all the data that will require examination before cross-examination.

The Master: I will suspend Dr. Bemis' cross-examination until his direct is complete, until you

39205

are prepared to say you are through; because when the cross-examination is finished I am going to let you examine on re-direct as to matters brought out on the cross and then I will not let you call him again. So I am going to suspend the cross-examination.

Mr. Ransom: I object to the leaving open of Dr. Bemis' testimony.

The Master: How can you object to it?

Mr. Ransom: I do. I take an exception.

The Master: Who is your next witness?

Mr. Chambers: Mr. Silverman, for cross-examination.

39206

Mr. Ransom: If there are any other tables coming in I would like to get them today.

The Master: Yes, I am going to insist on it. Have you any more tables, Major Clark?

Mr. Clark: Yes, I have two of them.

The Master: They have got to go in today.

Mr. Clark: I think they are ready.

Mr. Ransom: Could we have them now so we could have somebody checking them?

Mr. Clark: They are only short tables.

The Master: Mr. O'Brien, will you have any other tables?

39207

Mr. O'Brien: Your Honor, I can answer that question better this afternoon.

The Master: They have got to be in today.

Mr. O'Brien: I will try to keep within that direction.

The Master: Mr. Chambers, have you any other tables?

Mr. Chambers: Yes.

The Master: Put them in.

Mr. Chambers: I have not got them here now.

The Master: How soon will you have them?

Mr. Chambers: Late this afternoon.

39208

The Master: All right, they have got to be in today.

Mr. Ransom: Is that absolute?

The Master: That rule is absolute, all tables have got to be in today.

Mr. Chambers: Well, I except.

Mr. O'Brien: Is counsel for complainant putting himself in the position of crowding us that way?

The Master: I originally announced the rule, without the suggestion from anybody, that they all ought to be in by Monday.

39209 Mr. Ransom: Must be.

The Master: I would then say, "I will try to be reasonable, having suddenly made that announcement," and it seemed to me I had to draw the line somewhere. I passed it over Monday and I passed it over Tuesday. Now, we are to Wednesday and I think reasonable notice was given, and all tables going in have got to be in today.

Mr. Clark: That does not apply to the candle power?

The Master: No, certainly not. Those are not tables; they are simply tabulations for my convenience.

39210 Mr. O'Brien: Mr. Addicks started to speak to me when you were making a ruling, or about to make a ruling on your candle power tests, and I do not remember just what he said, but he had a typewritten statement at that time.

The Master: I do not care what he said.

Mr. O'Brien: He had excerpts from the minutes of the Executive Committee and I would like to ask whether he is going to return?

Mr. Ransom: Mr. Addicks had in court this morning a typewritten statement showing the other entries with respect to Executive Commit-

tee minutes for which you called. Mr. Addicks also said this morning that he had not quite completed his checking of it. Whether that will be completed today or tomorrow I am unable to say. 39211

The Master: Those are the minutes you referred to yesterday?

Mr. O'Brien: Yes. I am going at that time to ask leave to introduce in evidence—I am going to offer in evidence the minutes of those particular matters.

The Master: All right, that is not a table that requires a ruling.

Mr. O'Brien: In other words, I do not want excerpts or statements, I want the minutes themselves. 39212

The Master: I am going to rule out tables except as the witnesses have prepared copies of them.

Mr. O'Brien: In this other collection of excerpts he has not attempted to give me the minutes; he has just summarized them.

Mr. Ransom: No, he gave you an entire and complete quotation from the minutes.

Mr. O'Brien: Put him on the stand and see what he says.

The Master: Do not get into this discussion until we reach it. 39213

Mr. Chambers: By requiring all tables to be in you do not mean that we have to put in those that you ruled out? I would like to put in all those tables that you did not take.

The Master: No.

Mr. O'Brien: I take exception to the Master's ruling about putting in tables positively today.

Mr. Chambers: Also note my exception.

Mr. Ransom: I think we will be through with Mr. Silverman by one o'clock.

39214

Mr. O'Brien: I noticed yesterday in the record that Judge Ransom made an offer that was rejected by the Court, but he made the offer when I passed into the little anteroom there to bring in some manufacturing records of the 69th Street station. I do not know whether he intended to make that offer in my absence, but I note the fact that it was made and the offer was rejected by the Master.

The Master: The record will note that there are three counsel here for the defendants, and I am directing the case to proceed whether one

39215 counsel walks out of the room or not.

Mr. O'Brien: You remember when I asked your indulgence a minute to bring in the manufacturing reports—

The Master: I do not know what Mr. O'Brien refers to—

Mr. Ransom: I do not, either.

The Master: But if any offer was made in the absence of Mr. O'Brien it is simply a repetition of what has been done time and time again in this case, in the absence of Mr. O'Brien or Major Clark, temporary always, and in the temporary absence of Mr. Chambers. The defendants'

39216 rights have always been protected by the actual presence of one or more of the counsel, and in the particular instance Mr. O'Brien refers to, of which the Master has no recollection, apparently the Master sustained some protest made by some counsel for the defendants. Proceed with Mr. Silverman.

Mr. Chambers: I just want to ask a question or two of him that will not affect the cross.

NATHANIEL SILVERMAN recalled:

DIRECT-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. Mr. Silverman, do you recall the other day that the Master checked you up on using ward numbers and said there was not any such thing?

The Master: I did not say there was not any such thing. I said there might be ward lot numbers, but wards, as he testified, was an entirely different thing. He said that the numbers he referred to were wards.

Mr. Ransom: 1 to 28. 30218

The Master: Yes, but wards are sections of a town. Ward lot numbers are different.

Q. State what you meant by that, Mr. Silverman?

Mr. Ransom: Objected to as incompetent, indefinite in form.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. I believe I testified with regard to Block 1092, Ward Nos. 1 to 28.

The Master: Yes.

The Witness: Those numbers referred to lot numbers 1 to 28.

The Master: What ward was it in at that time? 30219

The Witness: I cannot tell you at the time, but I do not think there were 28 wards.

Q. How were they treated on the papers?

A. On the assessment bill they are shown as block number and ward number, but actually those ward numbers referred to the assessment on those lot numbers.

Q. Apparently they meant lot numbers?

A. Yes.

Q. That is what you meant?

A. Yes.

The Master: That is clear in the record.

CROSS-EXAMINATION BY MR. VILAS:

Q. Referring to your Tables 269, 270, 271 and 272, which are respectively Exhibits AA-392, AA-393, AA-394, and AA-395, have you those?

A. Yes, sir.

Q. Exhibit AA-392, your Table 269, does that contain all the book balances for the accounts denominated in the caption?

A. Yes, sir.

Q. In other words, that is a complete statement of the book balances shown by the company's books of
39221 General Structures, General Structures Improvements, Improvements to Real Estate for the years 1909 to 1918?

A. As shown by this table, yes, sir.

Q. The table shows those balances as taken from the books?

A. Yes, sir. Well, the table shows the total of the three balances combined; that is, the balances of those three accounts.

Q. Yes.

A. Yes, sir.

Q. In the next Table AA-393 you have undertaken to state the same book balances for certain prop-
39222 erties distributed over the different years?

A. What table number is it, please?

Q. Your Table 270.

A. Table 270 shows the net book increases for certain properties shown on that table, for certain years as shown by the table.

Q. Yes, but these were also taken from the same accounts as the preceding table?

A. Yes, sir.

Q. But they are only a part of the figures contained in those accounts?

A. Yes, sir.

Q. Then on the next Exhibit AA-394, your Table 271, you show the book cost of the general office building, the 57th Street building, by years?

A. Yes, sir.

Q. And that also is taken from these same accounts?

A. Yes, sir.

Q. And constitute a part of the figures found in those accounts?

A. Yes, sir.

Q. Then in Exhibit AA-395, your Table 272, you bring out the remainder of the book balances which you have not previously shown in the two preceding 39224 tables; is that correct?

A. What is that question?

Q. (Read by stenographer.)

A. Table 272 shows the book balances of Table 269, less certain properties shown by Table 270.

Q. That is to say, Table 270 is the Table 269 minus the Table 270?

A. Yes, sir; that is, for the balances.

Q. Yes. In Table 269, Exhibit AA-392, for the year 1907 you show a total balance December 31st of $78,694.05?

A. Yes, sir.

Q. Can you tell me from your working sheets how 39225 that balance is made up?

A. I believe I can. Improvements to Real Estate account, December 31st, 1910, $8,592.24; General Structures Improvements account, same date, $61,811.55; General Structures account, same date, $8,290.26, a total of $78,694.05.

Q. Look at folio 4 of the ledger of 1910. Do you see an item in the account Real Estate Improvements, Crib Bulkhead 132nd Street Dock, $4,921.22?

A. I see an item amounting to $4,921.22, in the account entitled Real Estate Improvements, Crib Bulkhead 132nd Street Dock.

39226 Nathaniel Silverman, Cross.

Q. Why didn't you include that in your totals?

A. These tables are made up under the direction of Mr. Hine and I was instructed to take in the three accounts mentioned before.

Q. Is that a real estate improvement?

A. I was instructed to make up this table including only those items which I mentioned before, and this is not one of those terms.

Q. Didn't you as a matter of fact find more than three accounts on the ledgers from which you made up the items you have just described?

39227 A. I followed instructions and used the three accounts only that I mentioned.

Q. Didn't you find on folio 20 of this ledger General Structures G. O. Building?

A. General Structures, General Office Building, 124-8 East 15th Street.

Q. Did you find on folio 50 General Structures 65th Street?

A. I did not find the account that I just named and I did not find—which account is that you named now?

Q. 65th Street.

The Master: Folio 50.

39228 A. What is the name of that account?

Q. General Structures, 65th Street, Emergency Wagon Shed, $5,199.04.

A. I did not use that figure because I made up this table under instructions and I used only those three accounts which I was instructed to use.

Q. Have you got the folio references to the three accounts which you did use? Point them out in the ledger.

A. Yes, sir, I think I can pick them out by referring to the index of the book.

Q. Very well.

A. On folio 20 General Structures General Office Building 124-8 East 15th Street, $895.28. I have got that as included in that balance. It is included in the balance of General Structures account, amounting to $8,290.26 at December 31st, 1910.

Q. Where did you get that amount for General Structures account that you just named?

A. $8,290.26?

Q. Yes, from what folio of the ledger?

A. Well, now, it was made up in part of this amount from folio 20, $895.28, and I can tell you the rest of them, too. 39230

Q. Yes.

A. This will take a little time. I have to look it up.

Q. Maybe I can expedite that a little bit. You took for that amount of $8,000 odd—you stated you took folio 20, folio 50, folio 52, all of them showing General Structures accounts, did you not?

A. I took 52, the 111th Street Emergency Wagon Shed, amounting to net increases of $54.01 for the year.

Q. Let me interrupt you there. Didn't you take a total figure of $2,195.94?

A. The balance at the beginning of the year is included and the balance at the end of 1909 figures— 39231

Q. I am talking about the figure for December 31st, 1910.

A. The figure for December 31st, 1910?

Q. Yes.

A. $2,195.94 as I see it here represents a balance at December 31, 1910. Is that correct?

Q. Yes.

A. Now, we have a balance at the beginning of the year, January, amounting to $2,141.93.

Q. I think that you are mistaken in the exhibit I am asking you about, which is your Table 269, which

shows book balances and does not show additions?

A. Well, but it does include the book balances there.

Q. Is not the $2,195.94 the book balance in that account on December 31st?

A. It appears to be, yes.

Q. I am trying to find out how you made up a figure of $78,694.05 which you show?

A. I think I can help you find it out.

Q. I think I can help you if you will let me.

The Master: Lead the witness.

39233 Q. Have you got that book balance?

A. Yes, I have got that.

Q. Take folio 50, General Structures, 65th Street. Do you find the book balance of December 31st to be $5,199.04?

A. It appears to be; yes, sir.

Q. Then take folio 20, do you find General Structures, G. O. Building, balance December 31st, $895.28?

A. It appears to be; yes, sir.

Q. Take them in. Now, take folio 6. Do you find General Structures Improvements, $33,449.21?

A. That is General Structures Improvements.

Q. Yes. Well, that all goes to make up this balance of $78,000 in Table 269?

39234 A. $33,449.21?

Q. Yes. Now, look at folio 49. Do you find there General Structures Hester Street, $1,276.06?

A. General Structures Improvements; yes, sir.

Mr. Chambers: Is that folio 49?

Mr. Vilas: Yes, sir.

Q. Take that in. Folio 58, do you find General Structures Improvements 474 West 159th Street, $27,086.28?

A. Yes, sir.

Q. Now, take 7. Do you find there Improvements to Real Estate, $8,592.24?

A. Yes, sir.

Mr. Chambers: What was that, folio 7?

Mr. Vilas: Yes.

Q. The sum of those items that you have taken off is $78,694.05, is it not?

A. I will have to figure it up.

Q. Do so.

The Master: $78,694.05?

A. Yes, sir.

Q. Now, I ask you again, having taken in to make up this figure of $78,694.05 items from the folios that I have stated in the previous questions, why did you omit Real Estate Improvements, Crib Bulkhead 132nd Street Dock, $4,921.22? 39236

A. Because I was instructed to take in these figures as I have got them.

Mr. Chambers: We do not claim it is used and useful, that is why.

Mr. Vilas: You do not claim that it is?

Mr. Chambers: No.

Q. Then I ask the witness why he shows Crib Bulkhead, 132nd Street Dock in 1911, Table 270, $11,155.76?

A. I only took those items which I was instructed to take in. 39237

By the Master:

Q. Each year?

A. Yes, sir; that is, for each one of those years as shown by the tables.

Q. Didn't you get general instructions to take in all the items shown in these years? You got specific instructions for certain accounts in each year?

A. I got certain figures for which I was to get the detail for these years.

Recess.

Afternoon session.

NATHANIEL SILVERMAN, resumed.

CROSS-EXAMINATION BY MR. VILAS:

Q. Now, referring again to this item of $4,921.22, crib bulkhead, 132nd Street dock, which we found in the 1910 ledger, and which you say you omitted, you found that item when you were making up this table, didn't you?

A. I came across the item, and I included it in 1911
39239 instead of 1910, because it was shown in the 1911 Account, Improvements to Real Estate, and was shown in a separate account during 1910. I think the entry was made in November of 1910.

Q. On page 3 of the 1911 Ledger, you found this particular item brought forward in the account entitled, "Improvements to Real Estate"?

A. Yes, sir, it is included in 1911 on page 3 under the heading of "Improvements to Real Estate," and I included that in my statement for the year 1911.

Q. In the 1911 figures that goes in to make up the balance you show?

A. Yes, sir.

39240 Q. Having carried it into this account, Improvements to Real Estate, you altered your decision by which you left it out in 1910?

A. I merely made up my 1911 figures and my 1910 figures to conform to the account. That item was included in 1911, and it was not included in 1910. It was not in 1910, and I excluded it.

Q. Then you exercised your judgment in leaving out that item of $4,921.22, Crib Bulkhead, or did you follow somebody's instruction?

A. What was the amount of that item?

Q. $4,921.22.

A. I don't recall now the exact details of it, but I know that did include it in 1911.

Q. Well, but it does include the book balances

Q. But as a matter of fact it first appears upon the books in 1910?

A. It appears under the Crib Bulkhead Account in 1910.

Q. Now, take your Table 271, Exhibit AA-394. This table shows the December 31st balances, Account of General Office Building and 57th Street Building am I right?

A. It shows the accumulated net book increases— 39242

Q. Are you looking at your Table 271?

A. Yes, sir. Yes, sir, it shows the book cost of certain office buildings, 1909 to 1918, and accumulated balances of December 31st of each year.

Q. Those balances are the balances that appear in the ledger in each case?

A. I will have to look at the ledger to make sure of that.

Q. All right. Here is the ledger for 1914. Look at the General Office Balance on the ledger, and tell me the amount that it shows?

A. Is this book 1914?

Q. That is the 1914 Ledger. Satisfy yourself on 39243 that.

A. Yes. General Structures, General Office Building, 1914, folio 20-P shows $3,250,031.02.

Q. And your exhibit shows $3,250,749.01?

A. Yes, sir, $3,250,749.01.

Q. How do you account for the discrepancy?

Mr. Chambers: Just a minute. I will not concede that there is a discrepancy. There is a difference in figures.

Mr. Vilas: There is.

Mr. Chambers: It may not be a discrepancy.

39244 Nathaniel Silverman, Cross.

A. The book balances shown by General Structures Account folio 20-P, December 31, 1914, is $3,250,031.02. The amount shown by Table 271, at the same date is $3,250,749.01, or an increase difference amounting to $717.99, which difference is made up of the following items:

Charges to General Structures Improvements Account, that is, net debit	
For the year 1909,	$9,095.81;
For the year 1910,	1,024.52;
For the year 1911,	242.00
	$10,362.33

39245

In 1913 the Improvements to Real Estate Account shows net credits amounting to $9,644.34, making a net increase of $717.99, which accounts for the apparent difference in the two accounts first stated.

Q. These charges in 1909 that you have spoken of were charges against the old general office building, were they not?

A. They were indicated as general office building.

Q. In 1909?

A. Yes, sir. I just take them as general office building.

39246 Q. And did you make an examination of all the accounts in those years in order to determine whether all of the general office building as it existed at that time was written off?

A. I don't know whether I did; I don't think so

Q. You don't think you did?

A. I don't think I did; I don't know now.

Q. Did you follow up the journal entries setting forth the details of these credits?

A. Which credits do you refer to?

Q. The credits that I just referred to, the old general office building?

A. Did I follow which, the journal entries?

Q. Yes.

A. Well, I don't know. If you will give me specifically some credits I may be able to state whether I saw the journal entries on them or not.

Q. Well, the credits by which during the years from 1909 to 1914 the old general office building was written off?

A. Well, I can't say offhand. I might be able to take some specifications with you and be able to recognize the journal entries that I read.

Q. Not to waste too much time on this point, are 39248
you certain that you have taken into account all of the credits on the books that would go to make up this balance as it appears on the ledger here to be some seven hundred dollars odd less than the amount you report in your exhibit?

A. The credits I show here purport to come from the three accounts, General Structures, General Structures Improvements, and Improvements to Real Estate.

Q. And you are certain you got them all?

A. Yes, sir.

Q. All right. Now, take up your exhibits in which 39249
you deal with assessments, Table 117 and Table 118, Exhibits AA-427 and AA-428 respectively. Now, Exhibit 248 deals only with the items in the last two columns of Exhibit 427?

A. That is Table 118?

Q. Yes.

A. Yes, sir.

Q. And it undertakes to distribute over the years indicated the total amount found in the last two columns of your Table 117, Exhibit AA-427?

A. Yes, sir.

Q. You testified yesterday, or when you were on the stand as to certain apportionments of assessments, which you made have upon percentage of area of the respective parcels into which the property was divided; for example, with respect to Block No. 3236, you testified that the amount of $33,282.94, which is the total assessment on this block, was apportioned by you to the south 450 feet of the block, on the basis of Senator Boylan's figures for the entire block, and his divisions of that, is that right?

A. I believe it is right.

30251 Q. That is, Senator Boylan has testified to a certain apportionment of the value of the whole block to the south 450 feet?

A. Well, I don't know exactly what he testified to, but my instructions in making the apportionment of just a few parcels, I think there were only about three or four, every one was apportioned exactly to the lot upon which it was levied. In this case I received instructions from Dr. Malthie, and I recall that that was about what he told me, and he mentioned Senator Boylan's valuation.

Q. Did he give you Senator Boylan's figures?

A. He gave them to me verbally. They may have

30252 been in memorandum form, but I think I got them verbally.

Q. But you did get his figures, that is, his total?

A. They were mentioned as his figures.

Q. His total figure?

A. Yes, sir.

Q. Of the portion that he placed on the south 450 feet?

A. Yes, sir.

Q. And that is the ratio which you used in dividing the assessment?

A. In apportioning, yes, sir.

Q. In apportioning part of this assessment, amounting in all to $11,094.31, to the south portion of this block?

A. Yes, sir.

Q. You had before you in making up these tables the assessment bills?

A. I believe I did, that is, in making up this table I didn't have all the assessment bills; there were quite a number I couldn't get.

Q. In the later years you had them all, didn't you?

A. I think I did, most of them.

Q. You had them all for this particular block No. 3236, didn't you? 39254

A. I might have, but I am not sure. I think I did.

Q. For instance, look at this bill from the Department of Finance, dated September 16, 1915. You had that?

A. Yes, I think I did.

Q. That bill shows the assessment against Block 3236, Lot 1, as $1,172.58, and is entitled, "For Grading Fordham Road"?

A. Yes, sir.

Q. Is that right?

A. I will just look at that a moment. That is "Fordham Road, regulating and grading, Harlem River Terrace, Webster Avenue." 39255

Q. Fordham Road from Harlem River Terrace to Webster Avenue, is it?

A. Yes, sir.

Q. How did you apportion this amount of $1,172.58 against the south 450 feet of Block No. 3236?

A. This amount of $1,172.58 is included in the total amount of $33,282.94, which total amount was apportioned, one third to the south 450 feet.

Q. In other words, you did not make a separate apportionment for each item?

A. Well, just a very few cases. In practically all other cases we did make an apportionment of every single item.

Q. I am speaking of this particular one?

A. No, sir.

Q. You took all the assessments, added them together, and apportioned them as a whole?

A. I believe all the assessments were charged to Block No. 3236, Lot No. 1, and for that reason we
39257 took them altogether and made the apportionment.

Q. Did you have before you any map in making your apportionment?

A. I don't remember, but if I looked at the map here I may be able to recall.

Q. Do so.

A. I have a map here to which I made reference at various times. I don't remember whether I did as to this item or not.

Q. You are referring now to Exhibit AA-126?

A. Yes, sir.

Q. Did you consult the tax maps at any time while you were making up this table of assessments?

39258 A. Why, which tax maps do you refer to, the City tax maps?

Q. Yes, those are the only ones I know?

A. You mean with regard to this Block 3236?

Q. I do?

A. No, sir.

Mr. Chambers: Exhibit AA-126 is the same.

Q. Is it not a fact that Fordham Road runs along the southerly side of this property?

Mr. Chambers: I have to object to that because it is as it is. Mr. Silverman does not pretend—

Mr. Vilas: If he doesn't know I will be glad to have him say so.

Mr. Chambers: He does not pretend to be an expert on maps. Exhibit AA-126 is like the City map.

Mr. Vilas: I think Mr. Silverman is perfectly capable of taking care of himself.

A. I would not be able to say whether it runs along the southerly side or any other side. It is not quite a straight street.

Q. It runs in a somewhat irregular way along the southerly portion of the block according to the map on Exhibit AA-126, which you are now looking at?

Mr. Chambers: I object to that on the ground 39260
that it runs as it runs, as shown on the map.

A. I won't be sure about it.

Q. You say you can't tell that?

A. No, I cannot determine that accurately.

Q. Let me ask you another question. Doesn't it run along one border of what you have called the southerly 450 feet of Block 3236?

A. Well, the south 450 feet appears to face in part on West Fordham Road, but I would not say that was not exactly southerly.

Q. Perhaps you don't agree then with the testimony that that tract is the southerly 450 feet?

A. The tract is known as the southerly 450 feet, as 39261
far as I know.

Q. What is that?

A. I say the tract is known as the southerly 450 feet, as far as I know.

Q. And it does front on Fordham Road, doesn't it?

A. It fronts in part on West Fordham Road; it also fronts on Harlem River Terrace.

Q. Did you take into consideration in making any of your apportionments on this particular item that this southerly 450 feet fronts in part on Fordham Road, as you state?

39262 Nathaniel Silverman, Cross.

A. In considering this item my recollection is that I consider it applied to the entire Block No. 3236, because the assessment bill showed the assessment levied against Block 3236, Lot 1, and the map I have before me, Exhibit AA-126, shows the entire Block as 3236, Lot 1.

Q. So you consider that the assessment applied to the entire block equally in all parts?

A. I would consider it so from the assessment bill, but as a matter of fact the apportionment was made by taking the total amount of $33,282.94, and con-
39263 sidering approximately one-third as applicable to the south 450 feet.

Q. I don't quite understand that. In dealing with this particular item you did not take into consideration the possible benefit which the improvement would confer upon one part of the block as distinguished from another?

A. With regard to this particular item, I don't believe I did.

Q. All right. Now look at this bill from the City of New York, dated June 20th, 1913. Did you see that when you were making up these tables?

A. I can tell by referring to my papers here. Yes,
39264 I believe I had that bill.

Q. That is for a total of $9,382?

A. Yes, sir.

Q. And it purports to be for acquiring title to Sedgwick Avenue between Fordham Road and Bailey Avenue, is that right?

A. Acquiring title to Sedgwick Avenue between Fordham Road and Bailey Avenue.

Q. You notice there, do you not, that there are apparently two lots assessed in Block 3236?

A. Yes, sir.

Q. Lot No. 1, for $7,823.51?

A. No, sir, $8,723.21.

Q. That is what I thought I said. And Lot 6 is $1,108.49?

A. Yes, sir.

Q. Now, in making this apportionment, did you consult the tax maps to ascertain the location of Lot 6?

A. As I recall it in making the apportionment of this particular item I don't think I had to consult the tax maps.

Q. Did you make any inquiry as to what Lot 6 was, and what part of the block it was in?

A. No, sir, I made the apportionment under the 39266
directions of Dr. Maltbie.

Q. What you mean to say is you took this total amount of $9,832 and included it in a sum which ultimately reached the sum of $33,282.94?

A. Yes, sir.

Q. So that the result of what you did was the same as if you had apportioned the assessment against Lot 6 over the entire Block 3236, wasn't it?

A. That is the total amount of that bill was included in the amount of $33,282.94, and that total amount was apportioned one-third to the south 450 feet.

Q. So the result is that you divided it up so that 39267
one-third of the assessment against Lot 6 was apportioned to the south 450 feet?

A. Yes.

Q. Now, take just one more illustration, Block 1157, Lot 1, to which you show in 1916 $162.50, as applicable to the west 500 feet?

A. $162.50, yes, sir.

Q. Did you have this bill marked "Entered October 31, 1916"?

A. I will just look it up in my papers and tell you. Yes, I had that bill.

39268 Nathaniel Silverman, Cross.

Q. That bill is for an assessment for a receiving basin on Amsterdam Avenue, northwest corner of 65th Street, is it not?

A. Yes, sir.

Q. And is for how much?

A. $260.

Q. How did you apportion that?

A. The bill reads, "Block 1157, Lot 1," as I recall it, it was apportioned to apply on the westerly 500 feet out of a total block of 800 feet in length, or 5/8.

Q. That is, you took 5/8 of the assessment purely
39269 upon an area basis as shown on Exhibit AA-126?

A. Yes, sir, in this particular case.

Q. And you did not take into consideration the location of the improvements with reference to the block?

A. I took into consideration the land against which the assessment was ordered.

Q. You did not take into consideration the fact that the improvement was located at one corner of the block?

A. No, sir.

Q. You did not examine the property?

A. Itself?

39270 Q. You never saw it, did you?

A. No, sir.

Q. And you did not give any consideration as to the question as to whether one part of the block was benefited more than another by the improvements?

A. I did not, but I don't know whether anybody else did.

Q. In making that apportionment you did not?

A. I did not, no, sir, not I personally.

Q. Now, there are one or two other parcels that are apportioned in your tables?

A. There were just a few parcels that were apportioned.

Q. Well, Block 1457, Lot 1, and Block 1704.

The Master: The record shows that.

A. Yes, sir.

Q. And what you have said with reference to the apportioning of these two items that I have asked you about is also true of the apportionment that you made of these other parcels, is it not? That is to say, you made the apportionment in accordance with the instructions as to their area or the valuations placed on the respective parcels?

A. Well, I made the apportionment in accordance with the instructions, but I can tell you exactly if I look 39272
at my working papers.

Q. Well, there are only two, let us take them up. Take Block 1457, Lot 6.

A. Yes, sir, I believe that is true of Block 1457, Lot 6.

Q. That was apportioned on area?

A. That is Parcel No. 2, $505.94?

Q. You show Parcel 1.

A. $456.29. That is for 1909 to 1918. Is that the amount you refer to?

Q. Yes.

A. Yes, sir, we used approximately 10 per cent, that is to say, 10 per cent for Parcel 2 and 90 per cent 39273
for Parcel 1.

Q. You did that in both instances, both in the years prior to 1906 and in the years 1909 to 1918, as shown on your Table 11?

A. Yes, sir.

Mr. Chambers: Prior to that it is all in there.

Q. And you made that apportionment also without reference to the location of the improvement with respect to the property or the benefits?

A. I made that according to instruction; yes, sir.

Q. Well, just answer my question. You did not

consider the location of the improvement nor the benefit?

A. No, sir.

Q. And that is also true of Block 1704, Lot 5, isn't it?

A. Block 1704, Lot 5, Parcel 2?

Q. Yes.

A. You refer to the amount of $15202, 1909 to 1918?

Q. Yes.

A. Why, that apportionment was made on an ap-

39275 proximate area basis, too, I believe.

Q. Can you point out any apportionment that you made on Table 117 or Table 118 where you took into consideration in making the apportionment the question as to whether one part of the block or parcel might be benefited by the improvement more than another part?

A. I used in practically every instance except in these few that were apportioned, approximately the assessment as levied by the City and as shown on the assessment bill. I made my application directly to block and lot number as shown on the bill.

Q. In other words, you assume that where an as-

39276 sessment was levied against a parcel of property it applied equally to every square foot of that property?

A. No, sir, in practically all other instances except these few that were mentioned where apportionment was made approximately, I was able to find out the amount that was levied against each lot of each block that was shown on the bill, and I apportioned it according to the assessment bill by block and lot. The amount was shown for each lot separately and not for the entire block alone.

Q. But you did not make any apportionment against Lot 6 of the Kingsbridge property?

A. You mean that one item on Block 3236?

The Master: Let us stop this. As to these parcels where Dr. Maltbie has cut them up on lines other than they appear on the Tax Maps, you spread the assessment proportionately over the property in accordance with the area directions given you by Mr. Maltbie?

The Witness: Yes, sir.

The Master: As to the others, the assessment was fixed against particular lots and blocks, and you have distributed it accordingly?

The Witness: Yes, and I have the records to support it. 39278

Mr. Chambers: May I just say this? Of course some portion of the lot might be more benefited than the other when they started in to fix the assessment, but finally it becomes a lien on the whole property.

The Master: No.

Mr. Chambers: Why isn't every part of the lot charged with that lien?

The Master: Not when you try to cut it up the way you do.

Mr. Chambers: When they lay the assessment of course they do it on the basis of some special benefit to some portion of the lot, but after they 39279 lay the assessment it becomes a lien on every portion of that lot equally.

The Master: Sure, a very fanciful basis, however, on which to distribute the assessment against it on any arbitrary basis. For instance, the Kingsbridge station was cut into plots 450 feet at the southerly end of it. It may well be that the assessment on that was out of all proportion to the amount assessed to the northerly end of it, for benefits I don't know.

Mr. Chambers: But finally the assessment becomes a charge against the entire property, don't you see that.

The Master: I see precisely what you have done, but I don't follow you and I don't agree with you.

By Mr. Chambers:

Q. Mr. Silverman, to return to the ledger of 1910, so far as it related to the 132nd Street crib, the way you treated that finally makes no difference at all one way or the other, does it?

39281 Mr. Ransom: I object to that, to say that it doesn't make a difference. He left out of the proper year, and it does not show in the balance of the year in which it occurs on the books, and the balance shown for 1910 is incorrect.

Q. Just explain, Mr. Silverman just exactly what has happened there in regard to it?

A. That amount was not included in the improvement to real estate account as shown there, that is, on the company's ledger, during the year 1910, but it was shown at the opening of the year 1911, and I included that amount in 1911.

Mr. Ransom: We don't know what use they

39282 are going to make of these balances from year to year.

Q. So the net result was what?

Mr. Ransom: I object to that as incompetent. He is not qualified to pass on the net result. The result is that when they try to figure return on what they call the abbreviated property, the part that they have cut down, why their figures will be wrong, both 1910 and 1911.

Mr. Chambers: That is not so at all, you don't understand it.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. Explain it, Mr. Silverman?

A. That item was included in 1911—

The Master: We have heard that fourteen times. I know it was included in 1911 and was not included in 1910. Now, why doesn't it make any difference when you look at the figures for 1910? You have given me a balance at the close of the year 1910?

The Witness: Yes, sir.

The Master: And this was not included?

The Witness: No, sir, it was not shown in that particular account in 1910. 39284

The Master: I know, but it was in general structures account of some kind, wasn't it?

The Witness: It was carried in a separate account.

The Master: Why didn't you put it in?

The Witness: It was carried in in the company's books in 1911.

The Master: Next question. If a balance is wrong it is wrong and how can it be right?

Mr. Chambers: It is not, you don't understand it.

The Master: I understand the item was not in there. 39285

Mr. Chambers: Because it was not in the books.

The Master: It was in the books.

Q. You finally included it?

A. Yes, sir, in the following year.

Q. And in the table in which you included it there was—I mean the following table, the third table?

A. No. 272?

Q. Yes.

A. That is book balances, Table 269, less certain properties, Table 278?

Q. Yes.

A. What is the question on that?

Q. I wanted to have you tell the Master what the final result was?

A. As Table 270 shows, charges for crib bulkhead, East 132nd Street were eliminated from Table 269, as shown by Table 272.

Q. Now, Table 272 does not include that item at all?

A. No, sir.

Q. One way or another?

39287 A. That is right.

Mr. Chambers: That is all.

(Witness excused.)

ADNA F. WEBER, recalled.

FURTHER EXAMINATION BY MR. CLARK:

Mr. Clark: First I will offer in evidence page 69 of the annual report of the New York Mutual Gas Company for the year 1918, as far as it has to do with gas oil.

39288 Page 65, table "Disposition of Gas."

I also offer the same pages of the annual report of the New Amsterdam Gas Company for the same year.

Also from that report, page 12, the portion of that page referring to the oil used in enriching gas at Astoria.

Q. Dr. Weber, I show you a table and ask you whether that was prepared by you?

A. It was.

Q. You had assistance in its preparation?

A. Yes.

Q. What does that table purport to show?

A. The adjusted cost of gas distributed in the year 1918 by the Consolidated Gas Company.

Q. Your first figure on that table comes from what source?

The Master: The exhibit indicates, I take it. It is Exhibit AA-134. Don't let us waste a lot of time on things like that. This table purports to indicate the sources from which the figures come.

The Witness: It does in nearly every case. There are a few cases where it does not.

The Master: Where are the cases where it does not? 30,290

The Witness: I think the first one. It comes under the deduction of cost of manufacture, the $3,000 item allowance for holder repairs. That is an estimate.

The Master: That is an estimate?

The Witness: That is an estimate I arrived at after consultation with Mr. Hine.

Q. What is the basis of the estimate?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Clark: Exception.

Q. What comparison did you make to arrive at that? 30,291

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Clark: Exception.

The Witness: The amount shown as paid for gas from the New York Mutual and New Amsterdam Gas Companies, the situations are not given there. Those are from Exhibit 364. The same with the Standard.

I think reference is given to all the other figures on that page.

On page 2 there is a deduction, less amount charged United States Government for use of organization, etc., at $150 per day at 21st Street, $36,900. That is taken from the books, and is not on Mr. Teele's exhibit. That appears in the testimony in the case also.

Q. General office and supplies and legal expenses are in Mr. Teele's exhibit?

A. Yes, they are in both Exhibits 205 and 364. The next item is sixteen thousand odd dollars for fire insurance participation income, and $1,180 for in-
30,803 surance fund income. That is derived from the books. That is not given in any of Mr. Teele's exhibits.

Q. Expenses and revenue from the office building are taken from Exhibits 402 and 403?

A. Correct.

Q. The items under miscellaneous operating revenue, where are they derived from?

A. The first item is given in Mr. Teele's exhibit, and so is the second item. The third item is Exhibit 402. The next item appears in Mr. Teele's Exhibit 205. Wharfage is also given in his exhibit. The next figure, of course, is a subtraction.

Q. The third page, how did you arrive at the cal-
30,804 culations of cents per thousand cubic feet?

A. I have applied as a divisor the sales of the Consolidated Gas Company to consumers as shown on Exhibit 364, 18,029,245 M cubic feet to these various subtotals already given on the first two pages to obtain the unit figures in this column.

Q. Assuming, Dr. Weber, that the complainant company and its subsidiary companies had obtained gas oil at the price of 3.05 cents per gallon, would there have been a saving of at least three cents a gallon over the price actually paid by them in 1918, taking into account the charge for lighterage?

Mr. Ransom: I object to that as incompetent. This witness is not a manufacturer of gas. The assumption is entirely unwarranted. The witness has no way of saying what would be saved, it is purely speculative and theoretical. The company cannot manufacture gas on adjusted book costs.

The Master: Objection sustained. As I understand it, Dr. Weber is assuming to prepare a table based upon the theory that three cents a gallon might have been saved. Is that right?

The Witness: 3.05 cents—no, that is not exactly it. The question as Major Clark stated it was 39296
that if the company had been able to buy—

The Master: I don't care about that. I sustain the objection to Major Clark's statement.

Mr. Clark: Exception.

The Master: I will see if I can get this schedule in for what it is worth.

By the Master:

Q. You have a memorandum here that the expense would be reduced and the profits increased by at least 12.05 cents per thousand cubic feet if gas oil had been bought at a saving of three cents a gallon?

A. That is correct.

Q. You mean that three cents less than they paid 39297
for it?

A. Three cents less than they paid for the oil used during the year, not for the oil bought during the year, but for the oil used during the year.

Q. As you figure it?

A. Yes.

Q. At what cost did you take oil used, book cost?

Mr. Ransom: I object to the question. The witness has no qualifications for making a computation of this sort. It requires a man who has some knowledge of gas operation.

The Master: I don't quite get that. If you take a quantity of oil at a cost of say six cents and use that up, and that shows that the cost is a certain number of cents per thousand cubic feet, and if you take the same figures precisely, except that you take out three cents, don't you get a mathematical result?

Mr. Ransom: Heaven knows what this witness has done.

Mr. Chambers: The Master is asking him what price he figured above that three cents.

39299 Mr. Ransom: If we had paid three cents for oil we would have gotten an entirely different quality of oil, and the result would have been entirely different.

The Master: That isn't it. I want to get all these fanciful theories into the case, and then hear what they amount to.

Mr. Clark: I object to the characterization of the Master that these are fanciful theories.

The Master: The objection is noted. They impress the Master at this time as being very fanciful.

Mr. Clark: I take an exception to the Master's

39300 language.

Q. What do these stars mean, part something?

A. Those particular figures are derived, that is, those figures do not themselves appear anywhere in evidence.

Q. What figure did you pick out?

A. It was a question of ascertaining the amount of oil used in that portion of the gas made by the New York Mutual and the New Amsterdam that came to the Consolidated Gas Company.

Q. How did you figure it out?

A. I took the same proportion of the total oil used

39301

that gas furnished to the Consolidated Company constituted in the total make.

Q. Then I am right in what I said before, that this table that you have prepared, this theoretical table, if three cents could be saved, is upon the theory that three cents might have been saved?

A. That is all it is, it is just a computation to show that if three cents—

Mr. Chambers: Down to that point it hasn't anything to do with that.

The Master: Whose witness is Dr. Weber?

Mr. Chambers: I just want to get you right, it is a sort of appendix. 39302

The Master: A whole lot of appendices ought to be cut out.

Mr. Clark: I object to the Master's language.

Mr. Chambers: I don't think the Master ought to show such an attitude to the witness. Above that it has nothing to do with this, as I understand it.

The Master: Do you understand it?

Mr. Chambers: Yes.

The Master: Well, I don't.

Mr. Chambers: If you will let Mr. Clark proceed— 39303

Mr. Clark: You call it fanciful, you call it names, and that is all.

The Master: The witness states on this statement that the expense would be reduced, which would amount to the statement that you would pay less for gas oil, and the profits increased, which would mean that you would make more money by at least 12.05 cents per thousand cubic feet, if gas oil had been bought at a saving of three cents per gallon.

Mr. Chambers: He could have put that on a separate table from that line there.

30304

The Master: Yes. Now, I suppose that means what it says. It sounds to me like perfectly simple English.

Mr. Chambers: Why not take that part separately?

The Master: Then further down, after he has gotten out these figures there is a statement, "a saving of 3 cents per gallon," which I again assume means paying three cents less for oil than they got it for, "would amount in the aggregate to $2,172,989.46, equivalent to 12.05 cents per thousand cubic feet of gas sold, without including

30305 the 10% surcharge, approximately $27,000."

Mr. Chambers: Yes.

The Master: This whole thing says that here are figures—

Mr. Chambers: Not the whole thing, just from that line there down.

The Master: That is what I am talking about.

Mr. Chambers: Do you see where I am pointing? Down here there is a proposition—

The Master: Beginning with the words, "The expense would be reduced," etc. There is a theoretical table in case the Gas Company could buy oil cheaper than they bought it for.

30306 Mr. Chambers: It is further down.

Mr. Ransom: The whole thing is theoretical.

The Master: There are a whole lot of theoretical things in here, I am going to take it. Perhaps in argument they can show me where some of these theories have foundation in fact.

Mr. Chambers: I was fearful that you thought he used that saving in the upper part of this table.

The Master: No. This whole statement is based upon other statements of other tabulations and other calculations and other eliminations, ar-

bitrary and otherwise, that are already in the case, and I am going to take it over the objection.

Mr. Ransom: Is it offered?

Mr. Clark: Not yet, no.

By Mr. Clark:

Q. You have deducted on the first page of this the cost of operating the 42nd Street station and the 14th Street station?

A. Correct.

Q. Have you allowed anywhere for making the gas which was made at those stations in 1918?

Mr. Ransom: I object to that as incompetent. 39308
Nothing could be more absurd.

The Master: I have got to allow Dr. Weber to explain what he has on here. Objection overruled.

Mr. Ransom: Exception.

Mr. Clark: They are very much afraid of this, I can see that.

The Master: Why, I don't see why they should be. Go ahead. Dr. Wheeler has worked out theories here, and the Public Service Commission have their theory of the defense.

Mr. Ransom: What is the use of putting it in? 39309

The Master: I will throw it out of the record if I find that it should not be there.

Mr. Ransom: You cannot make gas on theoretical costs.

The Master: Yes, and I will point that out in my opinion.

A. Yes, I made such allowance. I found in the case of Astoria Mr. Sangster criticised an item of $20,000—

The Master: Strike out the statement, "I found that Mr. Sangster criticised an item." I am not interested in that.

Q. Have you allowed in the figures for making the gas anywhere that was actually made in the 14th and 42nd Street stations?

Mr. Ransom: I will renew my objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Yes, sir.

Q. In what way?

Mr. Ransom: I object to the question. This witness is not qualified to determine where gas could be made.

39311 The Master: He is not testifying as to that. He has been asked now where in this statement he has allowed for it.

Mr. Ransom: He is not qualified to make such an allowance.

The Master: I don't say he is.

Mr. Ransom: No, but you are letting him spread this record full of these things.

The Master: I am letting him state what he did here. I should imagine you would want it.

Mr. Ransom: I don't.

The Master: I will take it anyhow.

A. I figured that as an offset to the $20,000 that the
39312 Astoria Company contributed to the United War Work Campaign.

Q. That was included in the expense charged to the Consolidated Gas Company?

A. It was.

Q. And that $20,000 is more than the cost of producing the gas which they made at these two stations in that year?

Mr. Ransom: I object to that question.

The Master: The question is allowed. I think Major Clark is doing very well in cross-examin

ing his own witness and showing the absurdity of this statement.

Mr. Clark: I object to the Master's language.

The Master: The objection is noted and overruled.

A. The amount made was 33,666 M cubic feet at those two stations.

Mr. Chambers: May I except to what you said about Major Clark?

The Master: Yes, that is what you are here for.

Mr. Chambers: That is one of the reasons. 39314

Q. The cost of making that amount of gas at Astoria would be what, Dr. Weber, according to the company's figures?

Mr. Ransom: I object to that as incompetent.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. It would be less than 50 cents per thousand cubic feet under any conditions.

Q. And what would that be in the total?

A. Well, assuming the maximum cost of 50 cents per thousand cubic feet it would be about $17,000.

Q. Less than the item of war work campaign which you have included in the Astoria cost of gas? 39315

A. Yes, sir.

Q. Dr. Weber, have you had occasion for the last thirteen years to examine reports of gas companies and their cost to ascertain what it cost to make repairs on holders, etc.?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Clark: Exception.

Q. Will you state what is the basis of making your allowance for holder repairs on the first page?

39316 Adna F. Weber, Direct.

Mr. Ransom: I object to that as incompetent.

The Master: I will allow the witness to state what the basis was.

A. It was the annual expense over a period of ten years at other holders, outlying and separate holder stations of the Consolidated Gas Company, taking into consideration the relative capacity.

Q. You applied that to the holder at the 14th Street station?

A. I did.

Q. It is not eliminated from the rate base?

39317 A. That is true, it is left in.

Q. Is this table accurate, has it been checked by you?

Mr. Ransom: I object to that as incompetent. Accuracy does not pertain to a document made up in this hypothetical and theoretical way.

The Master: Well, I assume the question to be: Does Dr. Weber claim that the figures be set down here as the figures that he means to testify to.

A. I didn't check every figure in here. The ratios, for example, are all figured on machines. I did not check those ratios, but I did have them checked on

39318 other machines.

Mr. Clark: I offer this in evidence.

Mr. Ransom: I object to its receipt on the ground that it is incompetent, irrelevant and immaterial; that it is gotten up on a speculative and theoretical basis; that there is no foundation laid for it; that with respect to many of the matters, particularly the matter of what he calls allowance for holder repairs, for example, it is made up on a hypothetical basis by some conference between himself and Mr. Hine which is not pertinent upon the question of the cost to this company, no proof

39319

of any such basis in the record; that the calculations and assumptions are calculations and assumptions which this witness is in no way qualified to make. The uniform system of accounts prescribes the items or elements to be regarded as the operating expense of the company for each of these matters in the form of an annual report and likewise prescribes the items to be included, and this witness, not being a manufacturer of gas or a gas engineer, could not be allowed to make assumptions and adjustments with respect to operating expenses and what constitutes the cost of gas distributed in the year 1918. The company 39320
cannot make gas on the basis of adjusted or hypothetical or theoretical cost.

The Master: The Master wants to note upon the record if he can make it clear, the theory upon which he has taken this and other statements. It would, of course be quite possible for counsel for the defendants, calling a witness like Dr. Weber, to ask Dr. Weber to make certain calculations while on the witness stand, upon the theory advanced by counsel for defendants. In the asking of these questions there would probably be questions such as a question calling for the witness's estimate of allowance for holder repairs, 39321
which I should be compelled to rule out because of the disqualification of the witness. The taking of testimony in that form would consume a very long period of time. The mere taking of tables has spread over weeks and months in this record. I have taken tables of this form subject to the criticism that has been made, some of the criticism appearing to me to be well founded, as a quick way of taking the testimony of the witness, which can be analyzed briefly on cross-examination. When the case is finally ended and summed

39322 up and analyzed the Master will try to point out clearly what exhibits have been accepted as proof of any fact, will try to strike out those exhibits that he believes contain no matter of materiality or competency or relevancy, and where improper, and will try to indicate the matters in exhibits that might otherwise be correct have been rejected by the Master, so that the complainants will not be hurt in the receipt of testimony in this form. I think it is in the interest of expediency to take it. The objection is therefore overruled and the exhibit received.

39323 Mr. Ransom: Exception.

Mr. Clark: I take exception to the Master's not taking that as offered, and the qualifications he has put upon it.

Mr. Chambers: I take an exception, too.

Mr. Ransom: I move to strike out the heading of this document. It is not an adjusted book cost, it is theoretical cost. If you want to call it theoretical book costs, or academic book cost—

Mr. Clark: Mr. Woods is the only theoretical fellow around here.

The Master: I will receive the exhibit as prepared. The title of this exhibit means nothing,

39324 nor does the title of any other exhibit. I am making the statement, and spreading it on the record so that the review court may not be misled by the title of this or any other exhibit. This title is selected by the witness or others associated with him, or by counsel, and means nothing, and is not considered by the Master in any manner, shape or form except as a means of identifying this list of figures or tabulation made up by the witness, or under his direction.

Mr. Clark: Exception.

Mr. Chambers: Exception.

39325

Mr. Ransom: The trouble with this is that it will be ten or fifteen volumes away from the testimony of the witness, and it will look like an exhibit that is entitled to some weight.

The Master: I can't help that.

Mr. Clark: It is entitled to lots of weight.

The Master: I can't help that. The paper will be received.

Table received in evidence and marked Defendants' Exhibit AA-465.

The Master: Is that all with Dr. Weber?

Mr. Clark: Yes, that is all.

The Master: Are there any more tables? 39326

Mr. Clark: Not so far as I know.

The Master: You had better know now. The cross-examination will be suspended until counsel for complainant have a chance to analyze this statement.

Mr. Ransom: Are there any more tables from the Commission?

Mr. Clark: I would not say that.

The Master: If there are they will be here this afternoon, that is all there is about it. Next witness.

Mr. Chambers: Are you ready to cross-examine Mr. Hine? 39327

Mr. Ransom: If there are any more tables I would like to have them.

Mr. Chambers: They are not quite ready.

Mr. Ransom: I would like to ask Mr. Birdsley a couple of questions.

39328

WILLIAM R. BIRDSLEY, recalled.

BY MR. RANSOM:

Q. Mr. Birdsley, is the gas testing apparatus at the City station at Grand Street and the Bowery identical with that at 79th Street?

A. Practically it is, yes.

The Master: No, is it?

Q. Is it or is it not?

The Master: If it is not, state the differences. "Practically it is" does not mean anything.

39329 A. The only difference in the apparatus at 79th Street as compared with Grand Street is that the candle balance is at the same side, same end of the table as the meter and pressure control apparatus.

Q. At which place?

A. At 79th Street.

Q. And where is it at Grand Street?

A. At Grand Street the candle balance is at the opposite end of the table from the meter and from the pressure control apparatus.

Q. Is it beyond the flame burner? Just tell me what you mean by saying it is at the opposite end of the table?

39330 A. In referring to the candle balance, in the case of the Grand Street photometer, the meter and pressure control apparatus is at one end of the table.

The Master: Which end of the table?

The Witness: The right side facing the table. Then comes the burner pillar, with the standard burner on it, then the bar, and at the left end of the bar we have the balance.

Q. In other words at Grand Street the position of the gas burner and the candles and candle balance are reversed?

A. Yes, sir.

39331

The Master: I have just had a telephone message that my boy has been injured by an explosion and the case is adjourned for the day.

Adjourned to Thursday, February 19, 1920, at 9:30 A. M.

39332

39333

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 39337

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, February 19, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton. 39338
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission.
MR. O'BRIEN of Counsel for defendant Swann.

WILLIAM BIRDSLEY recalled:

CROSS-EXAMINATION BY MR. RANSOM CONTINUED:

Q. Is the pipe which runs from the meter to the flame burner, the horizontal pipe—is that above or 39339
under the table?

A. Under the table.

Q. What is the size of that pipe?

A. A half inch.

Q. Are there any other variances or differences from what you stated yesterday between the Grand Street and the 79th Street testing apparatus?

A. Not that I know of. The apparatus is practically the same with the exception of the layout of the candle balance. Style, size of apparatus are all the same.

30340 Q. There is not any one continuously during the day and night in these testing rooms, is there?

A. No, sir.

Q. That is, each of these gas inspectors come to the testing room and make this test and then goes away somewhere else?

A. Yes, sir.

Q. To some other part of the city?

A. Not in 79th Street. There is a man stationed there half of the day and at Grand Street all of the day.

30341 Q. The tester at 79th Street is assigned to Far Rockaway?

A. Yes, sir.

Q. What is the other assignment of the tester at Grand Street?

A. He stays there all day.

Q. That tester works only at Grand Street?

A. Yes, sir.

Q. What are the instructions to the inspectors?

By the Master:

Q. Just let me interrupt you. You mean he stays there all day, has no other place to test?

A. Just tests at Grand Street.

30342 Q. Yes, you don't know that he sits in that room all day, though?

A. No, he does not sit in the photometer room all day.

The Master: I thought that was what Judge Ransom was trying to get, whether the man stays in the room all day.

By Mr. Ransom:

Q. What are the instructions from you to the gas inspectors with respect to the period for which gas shall be blown or purged before the test starts?

A. I have instructed them to turn the gas off at

one of the sulphuretted hydrogen burners for at least one hour.

Q. The same machine is used for testing all three or four or five different gases?

A. It is.

Q. That is, they first purge as to one and take their observation, and then they start on the next one?

A. I would like to explain about the purging first. The five gases are all purging at once, and continuously, one hour before the test, and purging all the time during the test; not through the photometer, but through the sulphuretted hydrogen burners. There is 39344
a short distance or a short length of pipe from the sulphuretted hydrogen burners to the photometer.

Q. What are the instructions as to the length of time between the tests on one riser before the beginning of the tests on the next?

A. The difference in time is generally from twenty minutes to half an hour.

Q. What are the instructions?

A. Not less than twenty minutes.

By the Master:

Q. What is the purpose of that?

A. Well, really, it would be physically impossible to make a test of any shorter duration than that, be- 39345
cause it takes ten minutes to make the tests on the photometer, the actual tests, the actual ten readings.

Q. What I wanted to know was, why the necessity for the instruction that the test on the second riser should not begin less than twenty minutes after the completion of the test on the preceding riser?

A. Well, it is impossible to do it any other way.

Q. Then there was not any necessity for the instruction.

A. There is no necessity for the instruction there, no.

Q. Were there any instructions?

A. There were no instructions as to—

Q. As to how soon they should start the second or third riser after the one before?

A. No. It was physically impossible to do it otherwise.

The Master: But you told Judge Ransom there were instructions to do it, and that is the reason I asked.

By Mr. Ransom:

Q. There are no instructions that at least half an
39347 hour shall lapse?

A. Oh, no.

Q. Do you say now there are any instructions that at least twenty minutes shall elapse?

A. There are no instructions, no. It is physically impossible to make it any less.

Q. I show you Mr. Wacker's test of October 18th at 79th Street, and ask you whether Consolidated gas was not in different pipes as you label it—was not tested at fifteen minute intervals (handing witness). No. 6 riser 11:05—

A. No. 6 riser at 11:05. There was twenty minutes elapsing between the New Amsterdam and No. 6. Then a test was made on No. 6 at 11:05. Fifteen
39348 minutes after, apparently by this, a test was made on Consolidated Branch 4, and twenty minutes after that a test on Branch 3.

Q. I show you one of Mr. Hillig's tests, September 16, 1918, at Grand Street, and call your attention to the fifteen minute interval between Branch 1 and Branch 2, and then the twenty minute intervals; that is correct, is it not?

A. That is correct. In these cases Mr. Wacker takes his time in the middle of the test.

By the Master:

Q. How do you know?

A. That is his practice. I know what he does.

Q. That would not make any difference, would it?

Mr. Ransom: Don't he take it uniformly?

Q. If he does that all the time, it would result the same, fifteen minutes, would it not?

A. It would result in fifteen minutes. In this particular case it would.

Q. That would not make any difference whether you took your time at the end of the test or in the middle of the test. 39350

A. No, it would not.

The Master: Then it is no explanation of it.

By Mr. Ransom:

Q. The usual time is half an hour, is it not?

A. No. No, it is not. There are a great number of cases where they make them twenty minutes apart. I have myself.

Q. Yes, I notice that. You say that in nine-tenths of the cases there is not an absolute half hour interval?

A. I would not say anything on that at all.

Q. You do not know?

A. No, sir. 39351

Q. Do you ever go over these test sheets to see to their accuracy, the accuracy of what is reported as to the corrected illuminating power on the basis of assuring the correctness of what these tests put on the test sheets show?

A. I have the results as shown on the report sheets checked with the smaller figures on the test sheet.

Q. But you did not have the correctness of the computations on the tests sheets, did you?

A. I did not do that myself, no, sir.

Q. Well, does anyone do it?

A. Now and then we look over it, glance over it. We have not got the time in our office. I only have one man myself.

The Master: There is no criticism of your office if it is not done. Judge Ransom wants to know if it is.

By the Master:

Q. As I take it, only occasionally you check it up?

A. Check it up; yes, sir.

Q. It is not a regular practice to check and compute?

39353 A. No, sir.

The Master: I do not understand that Judge Ransom means to reflect on you or your office.

Mr. Ransom: No, I do not.

The Master: He wants to get the fact for the purpose of argument on his side, that is all.

By Mr. Ransom:

Q. Have you your tables here today?

A. Yes, sir.

Q. Will you look at these eight sheets we picked out last night, out of a few months of 1918, and see if you find any of them are correctly computed, assuming the correctness of what the men put down (handing witness).

39354

The Master: Are they from different inspectors?

Mr. Ransom: Well, most of those are one inspector.

The Master: Let the record show what inspector it is.

Mr. Ransom: We started in yesterday on Hirschewitz and I think those that I have there are all Hirschewitz.

Mr. Ransom: And all 79th Street, I believe.

The Master: These are all Hirschewitz?

30355

Mr. Clark: I object to this witness correcting these. If they want Mr. Hirschewitz to, they can recall him.

The Master: Objection overruled.

Mr. Clark: Exception.

Mr. Ransom: We can take up some other witness and let Mr. Birdsley report on it later if you want.

The Master: In view of the fact that the Master had to leave about half past three yesterday afternoon, so that there was no opportunity to put in any further tables, the Master announces that no tables will be received after one o'clock today. 30356

Mr. Chambers: Here is what took place yesterday:

"The Master: Is that all with Dr. Weber?

"Mr. Clark: Yes, that is all.

"The Master: Are there any more tables?

"Mr. Clark: Not so far as I know.

"The Master: You better note cross-examination will be suspended" and so forth.

Then again:

"Are there any more tables from the Commission?

"Mr. Clark: I would not say that; if there are they will be here this afternoon." 30357

Then right after that you adjourned.

The Master: All right, one o'clock today for any tables; none after that hour.

Mr. Chambers: May I take an exception to that ruling.

The Master: Mr. O'Brien, while Mr. Birdsley is making some calculations Mr. Ransom asks that you dispose of Mr. Middleworth. I think you might as well. Do you want to call Mr. Middleworth?

39358

Mr. O'Brien: I suppose we might, your Honor.

The Master: I mean did you want to examine him or did you just want some documents?

Mr. O'Brien: I want to look them over.

Mr. Chambers: Will you note on the record that I take exception to the Master's ruling that at a certain day and a certain hour we are obliged to put in all our tables, and exception.

Mr. Clark: I join in that exception.

Mr. Chambers: I would like to add further that it deprives us of the right to put in our evidence after a certain hour, even though we are

39359 physically unable to do it before.

Mr. O'Brien: That does not apply to Dr. Bemis, does it?

The Master: He has not any more. He made the statement there was not any more.

Mr. O'Brien: That is right.

The Master: It applies to all the defendants and all the witnesses, except that is Senator Boylan has a table I will take it as part of his proof tomorrow. I think I said I would let that go until tomorrow.

Mr. Ransom: If he could not get ready today.

Mr. Chambers: I just want to point out that I

39360 except to the ruling that on a certain day at a certain hour, regardless of the sickness, health, inability of counsel or anything else, we have to have all our tables in.

Mr. O'Brien: I will not stop to take that up with you, except to join with my co-defendants in an exception to your Honor's ruling. Before one o'clock is reached I will call your attention to such matters as I deem proper in the premises.

HENRY V. MIDDLEWORTH, a witness called by the defendants, was sworn and testified as follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Middleworth, how long have you been with the Consolidated Gas Company, in its employ?

A. Twenty years. It will be twenty years the 4th of April.

Q. Have you always been in the Garage Department or the Stable Department?

A. No.

Q. What other branches of the work have you been 30362
engaged in?

A. The department of Mains and Services.

Q. And in what capacity?

A. Clerk and chief clerk.

Q. When did you take over the management of the Garage Department?

A. 1914.

Q. And you have been in charge since?

A. Yes.

Q. And continuously?

A. Yes.

Q. And at what salary?

Mr. Ransom: Objected to as immaterial and 30363
incompetent.

The Master: Overruled.

Mr. Ransom: Exception.

A. At present; present salary?

Q. During the whole of the period, give me your salary, if it has changed from time to time?

Mr. Ransom: Objected to as immaterial.

The Master: Overruled.

Mr. Ransom: Exception.

A. I do not know as I remember. In 1914, if I remember correctly, my salary was $2,800, and it has

39364 Henry V. Middleworth, Direct.

been raised from time to time, and it is at present $3,300.

Q. When did you get your last raise?

Mr. Ransom: Objected to as immaterial.

The Master: Overruled.

Mr. Ransom: Exception.

A. About two months ago.

Q. And the one before that?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

39365 A. As near as I can remember two years ago.

Q. Have you been promised any raises in salary?

A. No, sir.

Q. In the future?

A. No, sir.

Q. Have you been paid any time for overtime, any moneys for overtime?

A. Never.

Q. Or any bonuses?

A. Never.

Q. Were you not included in the Christmas bonuses of this company?

Mr. Ransom: Objected to. It assumes a state

39366 of facts—

The Master: It is allowed.

Mr. Ransom: Exception.

A. No.

The Master: Were there any Christmas bonuses that you know of?

The Witness: Not to my knowledge.

Q. What do your duties consist of?

A. Supervision of the repairs and maintenance of automobiles, wagons, tool carts, harness, stable equipment; the care and upkeep of horses; the repairs of tools and implements for the Department of Mains and Services.

Q. What is that—of the Department?

A. For the Department of Mains and Services.

Q. How many passenger automobiles did you have in the garage under your care and supervision during 1918—1919, rather, up to August 31st?

Mr. Ransom: Do you mean of the Consolidated?

Mr. O'Brien: No, I have asked him—

A. Do you mean Consolidated automobiles?

Mr. O'Brien: I have asked the question now. Judge Ransom does not need to interrupt. I know what I am asking him and I do not want 39368
him breaking in.

Q. How many passenger automobiles have you had under your care and supervision in the Garage Department during the year 1919?

The Master: Passenger cars.

Mr. O'Brien: Up to August 31st.

Mr. Ransom: Objected to unless limited to the Consolidated.

The Master: Overruled.

Mr. Ransom: Exception.

A. I will have to refer to a memorandum.

Q. Wait a minute. Can you tell us without your memorandum? 39369

A. I can tell you for the Consolidated, but not the other companies.

Q. How many for the Consolidated?

A. Twenty.

Q. Would you approximate the number of the other companies?

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: Objection overruled.

Mr. Ransom: He is not called upon to give an approximation.

The Master: All right, if he cannot approximate he won't, that is all.

Q. Can your memory be refreshed by some paper you have?

A. Yes.

Q. In whose handwriting is the paper?

A. Mine.

Q. Where did you make the transcription from?

Mr. Ransom: Objected to as immaterial.

The Master: Overruled.

Mr. Ransom: Exception.

A. From the annual report.

Q. You make an annual report, do you, to your
39371 superiors?

A. I do.

Q. Have you brought that report here?

A. It is here, I believe. I did not bring it.

Q. And the report is here from which you made the transcription that you speak of?

A. Yes.

Q. Will you then state, refreshing your memory either from the report or from the papers that you have referred to, the number of passenger cars of the other companies under your care and maintenance?

A. New York Edison Company, 20; New Amsterdam Gas Company, 5; Standard Gas Company, 1; Mutual Gas Company, 6, and private cars, 2, at the
39372 central garage.

Q. You are speaking about passenger cars when you have answered the question that I have asked you?

A. They are not all passenger cars, no.

Q. Going back to the Consolidated Company was the number you gave for them not passenger cars?

A. No, sir.

Q. How many passenger cars has the Consolidated?

Mr. Ransom: I object to that question. The question is vague and indefinite. What do you mean by passenger cars?

The Master: The objection is overruled. The term "passenger cars" is a very well known term as applied to automobiles.

Mr. Ransom: Exception.

A. Twenty.

Q. How many passenger cars of the Edison Company?

A. Twenty.

Q. How many of the other companies—passenger cars?

A. One New Amsterdam and one Standard Gas Company, and two private passenger cars. 30374

Q. They are of the officers of the company, I assume?

A. One of them.

Q. And to whom does the other belong?

A. A lady by the name of Adams, Miss Adams.

Q. Has she any connection with the company?

A. I could not say.

Q. Do you bill the expense of her car to any place or any person or any company?

A. We send a monthly statement to the Accounting Department.

Q. I assume you were directed to store the car and maintain the car there by some officer of the company? 30375

A. Yes.

Q. Mr. Addicks?

A. Yes.

Q. He is the officer of the company to whom you make your reports and from whom you take your orders?

A. Directly, yes.

Q. Does anybody else directly give you any orders?

A. Yes, Mr. W. Cullen Morris.

Q. He is acting under Mr. Addicks?

A. Yes.

Q. Does any other officer give you any directions?

A. No.

Q. Do you do all of your own repairing, all of the company's repairing of automobiles and auto trucks?

A. Practically.

Q. Only in rare instances sending them out to be repaired?

A. Yes, sir.

Q. And you make the repairs of the passenger cars and auto vehicles of all the other companies?

A. Excepting the New York Edison Company.

39377 Q. They make their own, do they?

A. They do.

Q. Do you know where their place is located; their repair shop?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Yes.

Q. Where?

A. 41st Street and First Avenue.

Q. Have you ever had a mechanical training of any kind, Mr. Middleworth?

A. Yes, sir. Not in any institution: I have simply

39378 worked it up by myself.

The Master: I won't take any time on that. I do not care whether he did or not.

Q. I assume a good part of your life has been spent in the Street and Main Department as clerk and chief clerk?

The Master: I am not going to allow that line of inquiry: it is not at all useful. You have brought Mr. Middleworth here, as I understood it, to show a waste of company funds in the use of passenger vehicles used for pleasure purposes rather than for the purposes of the company.

That was what I understood you were calling Mr. Middleworth here for.

Mr. O'Brien: I brought him here for various purposes, your Honor. Your Honor has not summed up the purposes of my bringing him here.

The Master: If there is any purpose in the question you have just asked him I would like to know it.

Mr. O'Brien: You will draw your own conclusions as to whether or not the supervision of the company's business has been handled with proper business acumen. 39380

The Master: Based upon the purpose that I can gather, if I can gather any, from the question asked of Mr. Middleworth, the last question and the question before it, I will not allow it.

Mr. O'Brien: Exception.

Q. Do you make daily reports of the transactions of your department?

A. Yes.

Q. To Mr. Addicks?

A. To Mr. Morris, and they go from Mr. Morris to Mr. Addicks.

Q. Do you show the time when each machine comes in and goes out? 39381

A. Yes.

Q. Who uses it?

A. Show the department using it.

Q. But not the individual?

The Master: Well, the reports are here, are they not, Mr. Middleworth?

The Witness: The reports are here; yes, sir.

The Master: The reports will speak for themselves. Let us have the reports.

Mr. O'Brien: The daily reports are called for.

The Master: For any particular period, do you want?

Mr. O'Brien: What is that?

The Master: Do you want any particular day, month or week? I see a tremendous volume of them here, a deskful of them. Do you want any particular day, week or month?

Mr. O'Brien: Why, we might take January of 1919.

Mr. Ransom: Here is all of 1919; they are arranged by months.

Mr. O'Brien: Daily reports?

Mr. Ransom: I take it you would call them

39383 that.

The Master: Show them to the witness and ask him if these are the daily reports.

Mr. Ransom: Here are the repair reports.

Q. Mr. Middleworth, won't you find that? We will save a little time.

The Master: No, he will stay here.

By the Master:

Q. What are these (handing witness)?

A. Those are daily records of the work going on in the repair shops.

Q. Daily records of work?

A. Daily records.

39384 There are different records, are there?

A. They are daily records of all the work going on in the shops.

Q. Are these different records for the use to which the cars are put and the hours they have been out?

A. Yes.

Q. So there are several daily reports?

A. There are four daily reports, one showing the record of the work going on in the shops, one showing the cars in the shops under repairs, one showing an hourly record of cars in the garage ready for use, and a daily memorandum of any unusual items of occurrence not reported elsewhere.

By Mr. O'Brien:

Q. Have you got to refer to a paper to tell us those things?

A. I did not want to get mixed between the daily reports and monthly reports.

Q. You would get mixed up if you did not have that memorandum?

A. Yes, sir.

Q. When did you make that notation?

The Master: You need not answer.

Mr. O'Brien: Exception.

Q. Who told you to make a notation on a paper to refresh your memory? 39386

A. Nobody.

The Master: You need not answer. Well, he has answered that.

Mr. O'Brien: I did not ask for anything except the daily reports of when the cars come in and go out.

The Master: The Master has asked for something now.

Mr. O'Brien: I object to the Master interrupting my examination of the witness.

The Master: The witness says there are four sets of daily reports. 39387

Mr. O'Brien: I have asked for a specific daily report. I call the Master's attention to the fact that when I asked for the reports the other day, the monthly reports, they did not bring the monthly reports covering passenger cars.

Mr. Ransom: That is exactly what we did bring and what I could not get you to look at.

The Master: I can hear you, Mr. O'Brien, without you yelling.

Mr. Ransom: These are the monthly reports he had the other day.

Mr. O'Brien: You showed me the monthly reports of when the car comes in and goes out. I will back the statement up, your Honor. There is the set of reports (indicating).

The Master: There is another set of reports I want. I have here Hourly Record of Cars in Central Garage Ready for Use. I have got a daily memorandum and daily record of work going on in shops. There is another record I want.

Mr. Ransom: Do you mean the Hourly Record of Cars in the Central Garage Ready for

39389 Use?

The Witness: That is here.

Mr. Ransom: Daily Record of Cars in Shops under Repair (handing Master).

The Master: Mr. O'Brien, call for what you want.

By Mr. O'Brien:

Q. Mr. Middleworth, with these packages of papers before you, will you pick out the report which you say is a daily report of the passenger cars used daily, when they come in and when they go out, and who uses them, or whatever information you make upon the report?

39390 A. None of these reports show the cars that go in and out daily.

Q. Then you were in error a minute ago when you said that a report had that information, but not the name of the man who used it, but rather the department?

A. You asked me if I had a record of the cars that went in and out of the garage, but that record is not included in the daily reports.

Q. Where is that record?

A. It is there (indicating). It is the Chauffeur's Register.

The Master: Let us have the Chauffeur's Register.

Q. These papers now before you, called the Chauffeur's Register, are kept by your department?

A. Yes.

Q. And notations made each day by someone under you as to when a car comes in and when it goes out?

A. Yes.

Q. Do you say by whom they are used?

A. Yes.

Q. When used? 39392

A. Yes, by what department used.

Q. Will you pick out for some month other than the last four months of 1919 the reports of chauffeurs of passenger cars? Get back in January, if I may suggest it, your Honor.

The Master: You said any month. Now, you say get back to January.

Mr. O'Brien: I recall this very minute that I asked for January.

The Master: Here are the sheets for January (handing witness).

Q. Now tell us the form in which this is kept. You have one sheet for all chauffeurs of passenger 39393
cars, or has each chauffeur a separate sheet?

A. One sheet.

Q. And he comes in—the chauffeur comes in and signs his name, and who put down the time?

A. The time is put down by the chauffeur himself, when he leaves the garage, the time when he reports to the garage, his car number, the time he goes out, the time he returns and who he goes for.

Q. Who is Mr. Addicks' chauffeur?

A. He has no particular chauffeur.

Q. Who are the chauffeurs who are on the twenty cars of the Consolidated Company?

Mr. Ransom: Objected to as incompetent.

The Master: The objection is sustained. I see no purpose in the examination—no useful purpose.

Mr. O'Brien: I can see a whole lot of purposes, your Honor.

The Master: You have got to show me.

Mr. O'Brien: I have shown you by my questions and answers.

The Master: I have just made the statement that you did not show me by your question and
39395 answer, and I am sustaining the objection.

Mr. O'Brien: And I take my usual exception. Here is a man that is brought here by me as a witness to find out something about the way in which they have conducted this business, they having failed to bring forward proof on that themselves and having declined to give me the data I asked for, when I wanted to have a chance to personally examine it myself. Now, I want to ask who these chauffeurs are and how that is arranged on there, and how they work it.

Q. Does any chauffeur on a passenger car ever work on an auto truck?

39396 The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. How many chauffeurs had you during the eight months of 1919 ending October 31st, handling passenger cars?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did you have as many chauffeurs as you had cars?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have you got a permanent book or record in which you make notations or in which notations are made as to when a car comes in and when it goes out?

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: The witness has already produced and the counsel now has in his hand—

Mr. O'Brien: I ask him if there is any other record, your Honor.

The Master: He has said there is none.

Mr. O'Brien: Any permanent book or record of the coming in and going out. 30308

The Master: The objection is sustained.

Mr. O'Brien: Exception.

Q. Are these reports turned in to Mr. Addicks, such as I have in my hand and which you call chauffeur's reports?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Is a copy of this sent to Mr. Addicks, or do you embrace the information set forth on some other daily report?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Will you point to or pick out of the package of papers before you a daily report that gives Mr. Addicks the information as to when the cars come in and when they go out? 30309

The Master: Objection sustained. The witness has produced a great volume of papers here. Counsel has in his hand the daily record sheets showing the information contained on them, and I see no useful purpose in the line of inquiry. It does not tend to prove or disprove a fact in issue in this case, so far as I can see.

Q. Is Car No. 74 a passenger car?

39400 Henry V. Middleworth, Direct.

The Master: Objection sustained.

Q. Is every car on this piece of paper that I hand you, dated January 31, 1919, a passenger car?

The Master: Objection sustained.

Mr. O'Brien: Exception to all your rulings.

Q. Is Mr. Addicks given any report that apprises him of the use to which passenger cars are put?

Mr. Goetz: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you pick out of this package of what you
39401 call daily reports a report that summarizes the information contained upon these Chauffeurs' Registers?

Mr. Goetz: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Does each car keep a daily mileage record?

The Master: Same ruling.

Q. Is this paper I hand you a record of the daily mileage (handing witness)?

A. No.

Q. What is that designed to represent or report?

A. That is the time that the car goes out of the
39402 gate at the garage.

Q. Well, that is a separate or another record, is it?

A. Yes.

Q. And who keeps that?

A. The gateman, the watchman.

Q. There is no name signed to that?

A. No.

Q. Do you know whose handwriting it is?

A. I do not.

Mr. O'Brien: I ask that it be marked for identification.

Mr. Goetz: Objected to.

The Master: No.

Mr. O'Brien: Exception.

The Master: What do you expect to prove by this witness, Mr. O'Brien?

Mr. O'Brien: I expect to prove the methods used, the kind of records, the lack of supervision and everything in connection with this that shows this is a needless expenditure.

The Master: In other words, you expect to show by this witness that it is not necessary for this company to have automobiles of any kind? 30404

Mr. O'Brien: You will draw that conclusion.

The Master: No, I am going to find out what the purpose of this testimony is.

Mr. O'Brien: Well, you cannot get me to appraise this witness of what I am going to ask him, your Honor. You will make your rulings on this.

The Master: All right, unless I can guess at what you are driving and see it is useful to this case, I will have to adhere to my rulings, ruling out all your questions. This is not a legislative investigation, where they go roaming all over the world. We have issues to try here. 30405

Mr. O'Brien: I have not taken this because it represents the only vulnerable spot in the methods and ways and transactions of this company, but as illustrative of their way of doing business.

Q. Have you got a time clerk in the garage?

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Have you got a time clerk in the garage?

Mr. Goetz: The same objection.

The Master: Sustained.

Mr. O'Brien: Exception.

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Q. Is there any name signed to the chauffeur's daily report or register, as you call it?

Mr. Goetz: Same objection.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Does it bear your signature?

Mr. Goetz: Same objection.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Or your approval?

Mr. Goetz: Same objection.

39407 The Master: Sustained.

Mr. O'Brien: Exception.

Q. Have you ever called anybody's attention to the fact, any of your subordinates' attention to the fact, that the last column which is entitled "Charged to" on the Chauffeurs' Registers in many instances is not filled out?

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Have you been given any directions as to discretion you may use with respect to the use of passenger cars?

A. No.

39408 By the Master:

Q. Have you any discretion?

A. None whatever.

Q. Do you give cars to anybody who asks for them, or only to certain officers of the company?

A. I am instructed verbally to furnish cars to officers of the company, or heads of departments, or anybody that they designate.

Q. Beyond that you have no control of them?

A. None whatever.

Mr. O'Brien: Just a minute, your Honor. You are not doing this with my permission or with my

approval. I except to your cross-examining this witness.

The Master: I am not asking for your permission or approval.

Mr. O'Brien: That is to say, I am registering my objection. That is all that means, your Honor.

The Master: I hear it very well, too—in a very loud tone of voice.

Q. If Mr. W. Cullen Morris puts in a requisition to you for a car do you have to recognize it?

Mr. O'Brien: The same objection to the Mas- 39410
ter indulging in cross-examination of the witness.

A. Yes.

Q. Do you ring up Mr. Morris and ask him what he is going to do?

A. No, sir.

Q. Have you ever rung up any officer to ask him where he is going?

A. No, sir.

Q. Or what he is going to do?

A. No, sir.

Q. Are these requisitions oral or in writing? A. In writing.

Q. All in writing? 39411

A. Not all.

Q. What percentage of the calls for the cars is in writing?

Mr. O'Brien: Objected to.

The Master: If you know.

Mr. O'Brien: Objected to.

The Master: In other words, is it the general rule or is it the exception to have a written requisition?

Mr. O'Brien: I object and except to your ruling.

39412 Henry V. Middleworth, Direct.

A. It is the general practice to requisition for cars when needed, but there are circumstances when it is necessary to get a car in a hurry and they do not have time to requisition for it.

Q. I see here some tickets marked "Emergency Tickets." What are they?

A. They are made for persons other than officers, to use cars, and that is the authorization for them to use them.

Mr. Ransom: We have thousands of these requisitions here.

39413 The Master: Yes, the stenographer will note that there seems to be great bundles of them.

Mr. O'Brien: I am just going to take exception to that interpolation of Mr. Ransom on this record, that there are thousands of these cards here, and say that there are not thousands of them.

The Master: The stenographer will note on the record that the Master sees a great quantity of packages here.

Mr. O'Brien: They cover four years, don't they? That little package you have in your hand covers 1916, and if you followed my subpoena

39414 it read 1917, 1918 and eight months of 1919.

Mr. Ransom: I say—

Mr. O'Brien: I object to what you say.

Mr. Ransom: I will say there are thousands of them here.

The Master: The stenographer will note that the Master has in his hand one of a number of packages of slips which are entitled "Transportation Department, Requisition for Automobile for Tomorrow," and also a lot of little slips called "Emergency Ticket"—a great mass of them here. I have not counted to see whether there are hun-

39415

dreds or thousands, but there are great numbers of them.

Mr. Ransom: Great numbers for each year. There are great numbers for each year.

The Master: The stenographer will also note there is a great mass—

Mr. O'Brien: With the Master emphasizing the word "great."

The Master: Yes, a very great mass of the papers marked "Transportation Department, Hourly Record of Cars in Central Garage Ready for Use." A similar very great quantity of slips are marked "Transportation Department, Daily 39416
Record of Cars in Shop under Repairs." A similar very great quantity of daily memoranda, so-called. A similar very great quantity of slips entitled, "Daily Record of Work going on in Shops at Central Garage."

Mr. Ransom: And many, many thousands of these—

The Master: I am doing this dictating, not you. A very great quantity of the "Registers, Transportation Department." That is, as I understood the witness to describe it, the "Chauffeurs' Register." A tremendous quantity of slips—
93417

Mr. O'Brien: I except to the change of the Master's adjective from "great" to "tremendous."

The Master: A very tremendous.

Mr. O'Brien: You will soon be using Ransom's adjective, or adverb, "dastardly."

The Master: Time slips, working time slips. They do not seem to be entitled in any particular form, but it has the hour and the day.

Mr. Ransom: Those are the pay roll time slips of the general office.

39418

The Master: They are apparently pay roll time slips.

Mr. O'Brien: Now, I ask the Master whether he will permit me—I am asking this beforehand so I will not take up the Master's time with a lot of questions he is going to rule out.

The Master: Wait until I get through, please. Likewise a large number of books entitled "Machine Shop."

Mr. O'Brien: You might summarize it by taking my subpoena, your Honor. My subpoena covers them.

39419

The Master: And a great mass of other material here, apparently called for by the subpoena. Now, what is it you want to ask me?

Mr. O'Brien: Now, I want to ask you whether I may be permitted to proceed with the examination of this witness without objection on the Master's part, as to this underlying data and as to the method of keeping the records, as to who these people are, as to whose signatures are there, as to whether they are in the employ of the company now and as to how the business of this place is transacted. I ask you that because I have put to the witness already some forty questions,

39420

and they have been overruled, and I do not intend to persist if your Honor's ruling along that line will be the same.

The Master: I am not going to let you go into a fishing excursion. I gather from what you have said it is a fishing excursion; I therefore will not permit that line of inquiry.

Mr. O'Brien: You can gather such deductions as you see fit by my asking for this data and being refused it, and having to bring it here under subpoena.

Mr. Goetz: That is not so.

30421 Mr. O'Brien: Your Honor knows I have not seen it before; I am not a wizard and I do not work the ouija board.

The Master: Mr. O'Brien, I cannot understand any contention on your part at this late day that this or any other material or data was not accessible to you. You know perfectly well that if you had made the statement to me at any time since the 15th of July, 1919, that you had been refused access to this data, or any other data, I should have impounded them in court so you would have access to them.

30422 Mr. O'Brien: That is all right, your Honor, I rely on the record as to that. The record has been made in this case.

The Master: The record is being made now, and the Master states upon the record that at no time heretofore has any statement ever been made by Mr. O'Brien that any part of the records of this company were not available to his experts, or to himself, and that if at any time any such statement had been made the Master would have directed the complainant to give access to them; and if there had been any trouble about them would have impounded the papers and had them in court accessible to the defendants.

30423 Mr. O'Brien: Your Honor, I rely on the record. I am not going to get into a controversy with you here; that will not lead anywhere. The record will speak upon that when this case is closed, and the record up to date tells that story. I called to your Honor's attention on various occasions, and I got the answer from the Master, and you told me several times, and recently particularly, if we could not get something to bring it here under subpoena, and I have got it here and proceeded to ask this witness questions. And

30424

I could say I would get over my ground without taking up the time of this Court today more than one hour and a half in examination of this witness, to bring out the method of doing business, the faulty method of doing business, the unreliability of the data here, the fact that it has not been audited by the witness Teele, who has come in here and brought exhibits that they ask us to rely upon for the profits and losses of this company in its gas business for the years in issue in this case.

30425

If your Honor is going to rule the same way in regard to my questions and my catechising this witness as to the method of keeping these reports, whose handwriting they are, how they are checked up and summarized in the reports that go into the main office, what action is taken there, and so on, those things that go to the heart of the reasonableness of the expense of this department, then I will not proceed, there is no use taking up your time.

The Master: You have had my ruling. Unless you have some particular point that you expect to develop I won't let you go ahead.

30426

Mr. O'Brien: Your Honor, I expect to develop those points that are quite obvious to me right on the face of things—that they do not intend anybody to know how they are running the business of that department.

The Master: Proceed.

Mr. O'Brien: That is what I intend to develop.

The Master: You were about to make an offer.

Q. Before I do that I will ask you to take what you call the Chauffeur's Register for the first eight months of 1919, Mr. Middleworth, and tell me if in any case these daily records have your O K, your signature, or your check?

The Master: If I hear an objection I will sustain it.

Mr. Ransom: Objected to as incompetent and immaterial.

The Master: Hearing the objection, the objection is sustained.

Mr. O'Brien: Exception. 39428

Q. Will you show me any daily report made to Mr. Addicks or to Mr. W. Cullen Morris by the garage department that gives him either in summarized form or in detail information as to when these cars come in and go out, and by whom they are used?

Mr. Ransom: Objected to as incompetent, immaterial and irrelevant.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. How often does Mr. Addicks come to the garage department, if at all?

Mr. Ransom: Objected to.

The Master: The question is not allowed. I do not care. 39429

Mr. O'Brien: Exception.

Q. Who is in charge of the garage at night?

The Master: The objection is sustained.

Mr. O'Brien: Exception.

The Master: Where do you get your meals, Mr. Middleworth? That is just as useful.

Mr. O'Brien: Your Honor can comment on the case. You have apparently a conviction on this matter that is a Chinese wall to my examination.

39430

The Master: I have no opinion at all.

Mr. O'Brien: You have expressed yourself very clearly this morning.

The Master: I have expressed myself very clearly and do it again—that if the defendants are able to show this company is expending more money than it ought to expend in the maintenance of its Garage Department, it can be done in a proper legal way and not in the manner attempted to be pursued by counsel for the defendant Swann; that the counsel for the defendant Swann apparently confuses this inquiry—

39431 which is the trial of an issue framed by pleadings—with a fishing excursion of a legislative or other public investigation, and that I am not called upon to go into here, and it would take us months and months and years to go into, the kind of inquiry that the defendant Swann seeks to enter into.

Mr. O'Brien: I except to the comment, commentary and the criticism of the Master. I offer in evidence these papers that are called by the witness "Chauffeur's Register," some in ink and some in pencil.

The Master: Those papers you are offering

39432 for the month of January, 1919.

Mr. O'Brien: I am going to offer all of January and up to August 31st.

The Master: 1919?

Mr. O'Brien: Yes, sir, all of the Chauffeur's Registers from January 1st.

The Master: January 1st to August 31st, 1919?

Mr. O'Brien: Yes. That will be, I suppose, a part of this bundle here.

The Master: To prove what?

Mr. O'Brien: To prove their method of doing business.

39433

The Master: Any objection?

Mr. Goetz: Objected to.

The Master: Sustained.

Mr. O'Brien: That does not comprehend everything, that proof. I am also offering it for such deductions as may be made by the counsel for the defendants and the Master and the Court to whom this case may ultimately be taken.

The Master: Objection sustained.

Mr. O'Brien: You will not receive them on any ground?

The Master: No, not on any ground suggested so far. They do not tend to prove anything except— 39434

Mr. O'Brien: They tend to prove an absolute want of business—

The Master: They do not.

Mr. O'Brien (continuing): —business supervision.

The Master: They do not.

Mr. O'Brien: Well, that is to be controverted later. You can close them out if you want.

The Master: I am ruling them out. I am allowing you an exception in case you forget it.

Mr. O'Brien: It is supposed I am excepting. That is an arrangement that we early entered into —that I am excepting to every ruling that you have made. 39435

Mr. Chambers: I want to record an exception. When Mr. O'Brien takes them I assume they are mine, too; but just for good measure I also am taking one now.

Mr. Clark: Might I ask for a direction of the Master? Dr. Weber has this table you spoke of, prepared in manuscript form, but he cannot have it typed before one o'clock.

The Master: If he has a table prepared be-

fore one o'clock he can put it in, whether it is in ink, type, pencil, manuscript or any other form.

Mr. O'Brien: Will your Honor permit one of these papers to be marked for identification?

The Master: No, sir.

Mr. O'Brien: Exception. How is the court on appeal going to know what the papers are?

The Master: I think they are sufficiently described on the record.

Mr. O'Brien: Will you allow photostatic records to be made?

30437 The Master: No, the record is encumbered with too much now.

Mr. O'Brien: Exception. I call your Honor's attention to countless of these slips here that do not indicate to whom the machine, the passenger machine, is to be charged up; to the fact of the various ways in which these so-called daily car service records are kept, and to the many matters that may be observed by an inspection of these papers—in even a cursory examination of the papers. In order that the record may be complete and the papers properly identified, I will say that the mass of papers I have just offered in evi-

30438 dence are entitled—

The Master: You need not state that, because I have already in the record stated what they are entitled. I have spread it on the record; I have read it.

Mr. O'Brien: Some of them differ, your Honor. This daily service car record is different from the others.

Q. I take it, Mr. Middleworth, that this smaller sheet is an individual sheet, is it, of an individual driver?

A. An individual car.

Q. Of the individual car. It is a record of the individual car?

A. Yes.

Q. And the other form is the paper that is signed up by the chauffeurs?

A. Yes.

By the Master:

Q. And another one is the gateman's record?

A. Yes.

Q. In other words, you have checked in every possible way?

A. Yes. 39440

Mr. O'Brien: Wait a minute, do not make that comment on the record without my objection, your Honor.

The Master: It is quite apparent.

Mr. O'Brien: There are not three ways. It is not quite apparent, and you are in error, if I may respectfully say so. The witness says this daily service card is the gate record. That is the gate record and there are only two kinds of papers in this bundle I have offered in evidence.

The Master: All right.

By Mr. O'Brien:

Q. Isn't that right, Mr. Middleworth? 39441

A. The Chauffeur's Register and the Gateman's Record.

Q. In that package of papers I have just offered in evidence is there a third or fourth or fifth form used?

A. No.

The Master: I did not refer to that package that you had there; I referred to this mass of packages on the table.

Mr. O'Brien: Yes, but you thought there was a record at the gate, a daily record kept of each car as well as a chauffeur's record.

39442

The Master: No, I did not.

Mr. O'Brien: Well, you said something about three ways.

The Master: There are a dozen ways of checking up these cars.

Mr. O'Brien: I except to your Honor's statement that there are a dozen ways of checking up this, excepting of course to your Honor's ruling and excepting—

The Master: Of course, in all large enterprises there is a possibility of some waste in the use of passenger cars. Anybody with any intelligence knows it.

39443

Mr. O'Brien: You can make such comments as you see fit in your findings. I am going to except to it being made on this record.

The Master: It is practically impossible in a big enterprise like this to have a detective following Mr. Addicks to see whether he is using it every minute of the time, or for the company's business, or if he stopped to call on somebody on a social visit, or have his lunch somewhere. It is practically impossible to have a detective follow Mr. Morris or other officials of the company.

Mr. O'Brien: I except to your comments.

39444

The Master: Using my ordinary everyday intelligence, I shall assume there is some use of it that is not strictly company use; there must be in the nature of things, and probably is.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Clark: Do we have to prove it is reasonable—the use of these cars?

The Master: No.

Mr. Chambers: The burden is on them.

The Master: I am not forgetting any burden at all.

30445

Mr. Chambers: The burden is on them to prove that this expense is reasonable.

The Master: Nobody is trying to shift the burden to you, Mr. Chambers, and I do not intend to, I am sure.

Mr. Chambers: That remains to be seen hereafter.

Q. Have you a set of books for the Garage Department?

A. No.

Mr. Ransom: I object to that as vague and indefinite.

30446

The Master: Well, the witness has already answered it.

Q. There is no book of any kind in which you set up your repair expenses, or other expenses?

A. No.

Q. The consumption of gasoline and various other things?

Mr. Ransom: Are you referring to his department, or to the company?

The Master: Mr. O'Brien is referring to Mr. Middleworth's department, I take it.

Mr. Middleworth, you make a memorandum of these things and they are sent to the office?

30447

The Witness: Yes.

The Master: The General Office Accounting Department?

The Witness: Yes, sir.

The Master: You don't keep a record of the accounts in your office?

The Witness: No, sir.

Q. Then there is no book of any kind that you have there?

A. No.

30443 Henry V. Middleworth, Direct.

Q. All of the records that you have are such as you have produced here today?

Mr. Ransom: I object to that as fully covered.

The Master: No, I will let him say if there is anything else.

A. Yes, all the records I have are here.

Q. Were these produced from your department?

A. All I produced here are. There are other records that were produced from the general office that I do not have access to there.

30449 Q. What ones did you bring?

A. I brought the chauffeur's register, requisitions for cars—

Q. You mean those tickets?

The Master: They are here.

A. The foreman's shop books.

The Master: Did you bring any of the time slips or anything of that sort?

The Witness: Those come from the general office, they are sent there, and the pay rolls are made up from them.

Mr. Ransom: The chauffeur's diary is produced.

30450 Mr. O'Brien: Just a minute, Mr. Ransom; you keep off of this.

Mr. Ransom: You interrupt and don't let the witness finish.

Q. Take your own time, Mr. Middleworth, don't let me rush you, answer all the questions and give it to us completely. Now, go back over that again.

The Master: No you won't.

Q. What did you bring here?

The Master: No, we won't go back over anything.

Q. Take it up, and give us the fact, tell me every kind of paper you have produced here today?

The Master: The witness will not go back and repeat what he has said. If there is anything else you recall, Mr. Middleworth, state it.

A. The daily report of the general night foreman, in diary form.

Q. Where is that?

A. It is here.

Q. Will you produce it?

Mr. Ransom: It has been produced.

The Master: Bring them over here, Mr. Middleworth.

(Books produced.) 30452

The Master: This shows the work that is being done at night, as I see it.

The Witness: Those reports I might state, are for my own information, and they don't go to the general office.

The Master: So you will know what is going on?

The Master: Do you look at this in the morning when you get there?

The Witness: Every day; that is the first duty that I perform.

Q. How long have they kept this kind of a book?

The Master: I won't allow the question. 30453

Mr. O'Brien: Exception.

Q. Have you produced this book as far back as 1916?

A. I don't think we kept that in 1916.

Q. Have you got that here for 1917?

A. I think we began this diary system in 1918.

Q. 1918 then, and 1919?

A. Yes, sir.

Mr. O'Brien: I offer that in evidence for the year 1918, and eight months of 1919.

Mr. Ransom: I object to the offer as made.

39454

The Master: I can see no useful purpose in the offer. The objection is therefore sustained.

Mr. Chambers: The other side objects to their admission?

The Master: The record speaks for itself.

Mr. O'Brien: I call your Honor's attention to the fact that the witness states that that is a diary of the night operations of the garage, that it purports to set forth the uses of these cars night after night, giving in some instances the name of the people using them, in some instances not giving the names, and setting forth various in-

39455 formation concerning which you and any court to whom your report is submitted may make such deductions as they see fit in favor of or against the complainant company. I therefore renew my offer of these diaries kept by the Garage Department, night diaries, and ask that they be received in evidence for the year 1918 and eight months of 1919.

The Master: Next question.

Mr. O'Brien: You make the same ruling?

The Master: There is no necessity for any other ruling. You have simply repeated the offer.

39456 Mr. O'Brien: Exception. I ask that they be marked for identification.

The Master: Application denied.

Mr. O'Brien: I call your Honor's attention to the statement in the front of the book, "This Year Book is the Property of the Consolidated Gas Company of New York, 21st Street and First Avenue." Will your Honor not mark them in some way so that we may separate them from other books?

The Master: No.

39457

Mr. O'Brien: I call your Honor's attention to the various pages here to convince you that this is a perfectly proper offer and should not be ruled out.

The Master: You have got to show me how it is useful.

Mr. O'Brien: Why, isn't it obvious to your Honor that here are records kept of passenger cars of this company running out at night, some of them bearing no—

Mr. Ransom: I object to such a statement of counsel, emergency cars.

39458

Mr. O'Brien: I will prove it, I will read it into the record now.

Mr. Ransom: This company has a great deal of business that has to be done at night, of course.

Mr. O'Brien: That is not evidence.

Mr. Ransom: If you can any misuse of cars I challenge you to do it.

Mr. O'Brien: January 3, 1919—

The Master: As I understand it, he is now about to proceed to show that there is a misuse of cars.

Mr. Chambers: No, he was about to state.

39459

Mr. O'Brien: I am showing what this book shows.

The Master: Does that book show a misuse of the cars?

Mr. O'Brien: You have got to make your own deductions.

The Master: What do you claim?

Mr. O'Brien: I claim that they have not kept a record of a great many of these passenger cars, as to the use of them.

The Master: Do you claim there was a misuse of them?

39460

Mr. O'Brien: You will make such deduction as you see fit. I claim it is a misuse, yes.

The Master: What is?

Mr. O'Brien: The use of passenger cars of this company at night.

The Master: Why?

Mr. O'Brien: I am not going into an argument with your Honor in the presence of the witness, whose examination I have not yet concluded. I intend to ask him questions about this, and why should I be forced into an argument with you pro and con as to whether the

39461 record shows a misuse of these cars or not?

The Master: What is it that you want to spread on the record?

Mr. O'Brien: I was going through that page by page to call your Honor's attention to the absence of a record as to who used many cars.

The Master: Well, do it on one page; that is enough.

Mr. O'Brien: Friday, January 3, 1919, passes issued for following cars: 5:10 P. M., Car No. 44; 5:30 P. M., Car No. 26; 5:45 P. M., E. D. Cameron; 6 P. M., Mr. Thomas; 11 P. M., Car 2014, Edison; 1 A. M., Car 28.

39462 The Master: Now, that is illustrative of other entries on other pages, is it?

Mr. O'Brien: Only there are on other pages more than are enumerated there.

The Master: Well, take some other page that has more, and let us have that. Pick out one there that has many, and I will let you put that on the record.

Mr. O'Brien: Passes issued for the following cars, 5:15 P. M.—

The Master: What day are you reading from?

Mr. O'Brien: Saturday, February 1, 1919. 5:15 P. M., car Mr. Morris; 5:30 P. M., Mr. Phillips; 5:35, No. 26. Note, with the bracket, Car 2,011, Edison car, "W. McMahon, one of the polishers, found a pair of ladies' stockings. Mr. Delehanty, from Mr. Kenny's office called for them." 6 P. M., 66; 6:30, Mr. Thomas; 6:45, 2,012 Edison; 11 o'clock, 2,013 Edison; 12:30 A. M., Car 28.

The Master: Now, there was something I wanted to ask there. Let me see those entries, will you? 39464

Mr. O'Brien: I think you had better let these go in evidence.

The Master: No, you have it in the record.

Mr. O'Brien: No, you should have these books in evidence, and then you will make your own deductions, or else you will make a serious error in this case.

The Master: Who is Mr. Travis, do you know?

Mr. O'Brien: I object to that. We know Mr. Travis.

The Master: I never heard the name before in my life. 39465

The Witness: He is assistant superintendent of the Department of Mains and Services.

The Master: Who is Mr. Phillips?

The Witness: That is Phillips of the Phillips Rubber Works. He went in his own car. He could not get his car out unless it went on the record.

Q. He keeps his car there, does he?

A. No, he delivered some tires there, or something of that sort, and he had to get a pass to get out. Otherwise he would not be allowed to get out with his car.

The Master: Who is Mr. Delehanty from Mr. Kenny's office, do you know?

The Witness: I do not.

The Master: Nobody connected with the Gas Company that you know of?

The Witness: No.

Mr. O'Brien: I object to your Honor's taking over this examination. You have undertaken to ask this witness a lot of these questions.

The Master: I am only asking him about these that you read into the record.

39467 Mr. O'Brien: Unless I am going through this record right I am going to object to your Honor's examining this witness. I want to make my own record. It is all right to draw a deduction that they were out looking at leaks, but I will draw my deductions in my brief.

The Master: The first item on February 1st, 5:30 P. M., is opposite the name of Mr. Travis. I thought Mr. O'Brien read it.

Mr. Chambers: I would like to say at this point, your Honor ruled that we had to get in all of our tables by one o'clock. I took an exception to that. Now, at 10:30 I understand we

39468 called for some records that relate to these tables and I am further informed that they have not furnished them yet. They said we could not have them until Mr. Davidson got there, and he was not there. Now, I ask the Master to straighten that out.

The Master: What records are they?

Mr. Maltbie: Records of Transferred Gas for one thing.

The Master: You have had them for six months.

Mr. Maltbie: Not for 1919.

The Master: Why, you have had that for months.

Mr. Ransom: What they have asked for, may the record show, so far as the Consolidated Gas Company is concerned, are the records of December, 1919. The thing which they have principally asked for are the records of other companies, which we immediately started out to get. The records that were in anyway available were immediately turned over, and the records of the other companies probably have been turned over to them by this time. This is December, 1919, 39470
that they are after.

The Master: All right, go ahead, Mr. O'Brien.

Mr. Chambers: Will your Honor see that we get these, or extend the time?

Mr. Ransom: They have got them.

The Master: I am informed that you have them.

Mr. Chambers: If that is not so, that we haven't got them—

The Master: I will handle it when the situation arises.

Mr. O'Brien: Will your Honor now permit these diaries to be marked in evidence? 39471

The Master: No, I have made my ruling.

Mr. Chambers: May I just take an exception there?

The Master: You may.

Mr. O'Brien: Exception. You make the same ruling, I take it, that they may not be marked for identification?

The Master: Yes.

Mr. O'Brien: I take an exception to that.

Q. Do you keep the same kind of records such as have been produced here, daily reports of various

kinds for the passenger cars and auto vehicles of the other companies?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. We come back now to where you left off in enumerating just the records that were brought here by you. That was interrupted, the statement you made as to the records produced here by you personally. Finish that, Mr. Middleworth.

The Master: Mr. Middleworth, just start at this end of the table here with these diaries which
30473 you have just identified, and go carefully over each pile and say which records you have produced from your department. Let us get it once and for all, and then I will not allow another question on it.

A. The night foreman's diaries; the requisitions for cars; the emergency tickets for the use of cars; the shop foreman's daily record of work performed; chauffeurs' registers; a time book of extra employees.

Q. Extra employees?

A. Yes, like floating drivers. Some days we have one or two horse drivers and some days we have five or six, and sometimes as many as fifteen, pos-
30474 sibly

Q. Drivers?

A. Horse drivers.

Q. Chauffeurs, too?

A. Yes, chauffeurs.

Q. Open that up.

The Master: Complete your survey of the table now. See if there are any others. In those chauffeurs' registers are likewise the gateman's report?

The Witness: Yes, sir.

The Master: You produced those, too?

The Witness: Yes, sir.

The Master: Anything else?

The Witness: That completes it.

Mr. Ransom: Are not chauffeurs' diaries and chauffeurs' registers the same?

The Witness: There are chauffeurs' diaries.

Mr. Ransom: Those things have been produced for each of these various years?

The Master: There is a great mass of each kind, that is all I know about it.

Mr. Ransom: I would like to have it appear in the record that these are covered. 39476

The Master: Well, you are making the statement that they covered the period called for in the subpoena, I suppose. Is that correct?

Mr. Ransom: 1916, 1917, 1918 and 1919.

The Master: Of course, the night foreman's diaries only run back to 1918.

The Witness: Yes, sir.

The Master: They started to keep them then?

The Witness: I stated that.

Q. You have just enumerated papers brought by you, you have not confused that with papers from the main office?

A. No. 39477

Q. You understood my question to mean only those produced by you?

A. Yes, sir.

Q. You brought those from the garage department?

A. Yes, sir.

Q. And this book that you have handed me as a book of extra men, is that extra men?

A. Yes, sir.

Q. And it runs from November 24, 1917, through August 31, 1919, does it?

A. Yes, sir.

The Master: It is a current book, right down to date, is it?

The Witness: I believe it is; yes, sir.

Q. Whose handwriting is this kept in?

A. A clerk's.

Q. A clerk at the garage?

A. Yes, sir.

Q. Have you any other papers or records in your office that were not included in the subpoena?

A. Not that I recall. I think I brought everything I could find.

39479 Q. No personal memoranda, what you might consider personal, that you have left behind?

A. I don't recall any at the moment.

Q. Well, think a minute?

A. I can't recall any other records that I have not brought here.

Q. Is there such a thing as a chauffeurs' dairy?

A. There is not.

Q. Has there ever been one used since you have been head of the garage?

A. There is not, other than the chauffeurs' register, if you might call that a dairy.

The Master: Which you have produced?

39480 The Witness: Which I have produced.

Q. Do any men make written reports to you, men under you, in the repair department?

A. Yes.

Q. Have you bought those reports?

A. They are there.

Q. What kind of reports are they, report of material used?

A. Report of material used and work done.

The Master: Those were produced from the main office?

39481

The Witness: No, they were produced from the garage, the original foreman's book that he makes in the shop.

Q. These records which you say you have produced here were produced from your own office or the garage?

A. Every one of them; yes, sir.

Q. They are kept there?

A. Yes, sir.

Q. In your office there?

A. Yes, sir.

39482

Q. And they have been there right along?

A. Yes, sir; never have been out of there before.

Q. Has Mr. Teele, or any accountant ever been to your office to go over these records?

A. I don't recall that there has.

Q. Just think for a minute now before you answer the question so we will get it definitely?

A. I don't recall that any one has ever looked them over.

Q. And you do not recall their having gone out to anybody, being taken out by anybody in the company?

A. Except possibly one or two reports might have been asked for and returned; I could not state definitely.

39483

The Master: Well, what is done, if anything, towards sending in any information to the main office about the amount of material used and work done and time used, and that sort of thing? Does that ever get to the main office in any form?

The Witness: Oh, yes, there is a monthly report sent to the general office of work done.

The Master: How about the pay roll, how does that get to the main office?

The Witness: By the individual time cards

A pay roll is made up at the general office on a Hollerith machine from the cards.

The Master: You send some reports to the main office every day, don't you?

The Witness: Four.

Mr. O'Brien: Just a minute, your Honor, I am going to object here to your going into the cross-examination of this witness, or the direct examination, or whatever you see fit to call it.

The Master: Yes.

Mr. O'Brien: I am going to call it to your
39485 attention that the record shows that you have been persistently doing that since we have been putting in our defense.

The Master: Likewise while the complainant was putting in its case.

By the Master:

Q. Those were the four daily reports?

A. Yes, sir.

Q. Did you make a weekly report?

A. No.

Q. Not even a pay roll?

A. Well, those pay roll slips go weekly.

Q. The pay roll slips go weekly?

39486 A. Yes, sir.

Q. Is there anything else that goes weekly?

A. No.

Q. Monthly, do you send anything?

A. Ten.

Q. Ten reports?

A. Ten reports.

Q. What are they?

A. I will have to refer to a memorandum. I can't state that right off the reel.

Q. Do so.

Mr. O'Brien: Your Honor, I am going to object, and I hope you will desist from this examination of the witness.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Monthly reports—

By Mr. O'Brien:

Q. You can't give them without referring to the paper that you took out of your pocket?

A. I might omit one or two. There are ten of them.

Q. You think you might omit them? 39488

A. I might possibly. One is meter readings; boosting electric machines.

The Master: What does that mean?

The Witness: That means an extra charging of the machines, in order to get them to complete their trip.

The Master: It is practically a recharging of the electric machines?

The Witness: Yes, sir.

Mr. Ransom: And outside recharging, is it?

The Witness: Yes, sir. Report of hours in use of automobiles; gasoline report, gasoline used; mileage report, covering the number 39489 of miles covered by each automobile.

The Master: Is that based on something in your office?

The Witness: That is all taken from the chauffeurs' register?

The Master: That is all taken from the chauffeurs' register?

The Witness: Yes, sir.

The Master: The chauffeurs' register shows that?

The Witness: Yes, sir.

Q. Where does it show that?

The Master: Let him finish this.

Mr. O'Brien: I want to ask him right here.

The Master: I say, let him finish that list.

Mr. O'Brien: The examination you are going through is entirely improper. All right, your interruption is improper.

The Witness: The mileage report is shown from the speedometer readings on the cars. Fire protect reports; a report of work performed on affiliated companies' cars and individual cars;
30401 monthly petty cash reports; monthly report of repairs made on the road; insurance reports. I think that is ten.

Q. Where is there on this chauffeurs' register any record of mileage?

A. There is none.

Q. Is there any paper on the table here produced by you that gives us the mileage of the cars?

A. Not produced by me.

Q. Produced by the company?

A. I could not say.

Q. Look them over and see.

The Master: What reports did you call for?

30402 The Witness: Monthly mileage reports, they are sent to the general office.

The Master: Are they here?

Mr. O'Brien: Let the record show that Mr. Ransom is asking Mr. Addicks—

Mr. Ransom: I am asking Mr. Addicks.

The Witness: I understand they are here, but in the conglomeration of papers on the table it is rather difficult to find them.

The Master: See if you can find them.

Mr. Ransom: I got together from the general office everything that I knew about, but those ap-

parently are not here. The subpoena did not call for anything from the general office, we brought all these things from the general office quite gratuitiously.

Q. Let me see that paper a minute (referring to paper from which the witness had been reading).

Mr. Ransom: We will send for them.

Mr. O'Brien: Send for the boostings; hours in use; fire protection records; report of work performed on affiliated companies' cars and individual cars; monthly petty cash sheets; report on repairs made on the road; insurance reports; 30494
vehicle accident reports; State Industrial Commission reports as accidents occur. Also the hourly records of cars in central garage ready for use, if they are not here.

The Witness: They are here.

Mr. O'Brien: Daily record of work going on in shops of central garage.

The Witness: That is here.

Mr. O'Brien: Daily record of cars in the shop under repairs.

The Witness: That is here.

Mr. O'Brien: Daily memorandum of any unusual occurrence in addition to the items re- 30495
ported elsewhere.

Mr. Ransom: That is here.

The Master: Now, what else do you want?

Mr. O'Brien: That is all.

The Master: What do you want them for?

Mr. O'Brien: I am reading from the typewritten memorandum that the witness has just handed to me. Who had this typewritten?

The Witness: I did.

Q. Where?

A. At the garage.

Q. You have a typewriter there?

A. I have, and a stenographer.

Q. Did anybody send you the data by which you made that up?

A. No, sir. I dictated that as he read it.

Q. Did anybody tell you to bring this memorandum? A. No, sir.

Q. Have you had any talk with counsel in this case prior to your testimony today?

A. No, sir.

Q. Did you talk with Mr. Carter or Mr. Addicks?

30407 A. No, sir.

Q. Did you read the record of the examination in this case?

A. I read Mr. Addicks' testimony.

Q. Yes—who gave it to you to read?

A. Mr. Goetz.

Q. Then you did talk to Mr. Goetz, didn't you?

A. I did not.

Q. What did he say to you if he gave them to you?

A. He said, "Perhaps you would like to read Mr. Addicks' testimony."

Q. "Perhaps you would like to"—did he say anything further than that?

30408 A. Nothing.

Q. Did Mr. Vilas say anything to you about this case?

A. Mr. who?

Q. Mr. Vilas?

A. I don't know the gentleman.

Q. Did Mr. Ransom?

A. No, sir.

Q. Did Mr. Armstrong?

A. No, sir.

Q. Anybody else connected with the company?

A. Mr. Mrich called me up at my home and told

30499

me I was wanted here, and to appear. That is the only one I have talked with.

Q. What did he say to you?

A. He said, "Be ready at 9:30 tomorrow morning at court," nothing else. First he told me to go to the garage, and afterwards he called me and said I had better report at court.

Q. Is the mileage report turned in every day?

A. No, sir.

Q. How often?

A. Monthly.

30500

Q. Do you keep copies of the mileage report?

A. Yes, sir.

Q. At the garage office?

A. Yes, sir.

Q. Why didn't you bring them here?

A. I was not told to bring copies; I was told to bring records.

Q. Did you rely upon the main office to produce the mileage report?

A. I did not rely upon anybody.

Q. Didn't you think they were important?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

30501

Q. Did Mr. Ulrich say anything to you about the mileage report

A. He did not.

Q. Have you got a report here called, "Hours in Use," produced by the main office or yourself?

Mr. Ransom: I believe the Hours in Use record is here.

Q. Will you take this pencil and check off, Mr Middleworth, the reports that have been produced by either you or the company, and those that we still haven't got?

30502

The Master: The witness will do nothing of the sort. He is not here for that purpose. What is it you want?

Mr. O'Brien: I want every kind of a report that is not here, that he has just enumerated to your Honor when you undertook to examine him over my objection.

The Master: All right, you have called for them. As near as I can figure it out I brought out a matter that you had not brought out. I brought it out for you. I don't know what you are complaining about. You never asked him

30503 the question that brought out this information. I brought it out for you.

Mr. O'Brien: Your Honor is getting me into an argument, and that won't be pleasant, and what is the use of taking that up? You are the Master and I am an attorney here, and I have got to observe the rules that obtain in courts, and I don't think I could—

The Master: You need not hesitate to argue. You make the point that I have been interrupting you and taking the witness out of your hands and asking him questions.

Mr. O'Brien: I do.

30504 The Master: I have just called your attention to the fact that by taking the witness out of your hands and asking him some questions for my own information I brought out the fact that there were a number of reports sent by him to the main office that the company has not produced here under your request, which gave you an opportunity to call for additional reports. How did that hurt you?

Mr. O'Brien: I won't argue that with you, because I might say something that would be unpleasant.

39505

The Master: Go on, now. Say anything you like, pleasant or unpleasant.

Mr. O'Brien: While we are waiting for these reports I might go into the nightwork there.

The Master: No, go on and ask the witness anything else you want. I am not going to keep the witness here.

Mr. O'Brien: Won't you wait for those reports?

The Master: No. Go on and ask the witness anything you want.

Mr. Ransom: The record ought to show that there has been no subpoena or request made of 39506
anyone except this witness to produce certain papers under his control.

Mr. O'Brien: I call your attention to the fact that item No. 3 of this subpoena calls for all records of outgoing and incoming automobiles in the garage, all records of any and every kind in reference to the use made of the automobiles of such company and affiliated companies. Item No. 4 calls for all books or records kept at such garage of every kind and description. Item No. 1 was, all time cards, time books, pay rolls, records of extra employees—

The Master: That subpoena has been spread 39507
on the record.

Mr. O'Brien: No, it has not.

Mr. Ransom: Whose subpoena is that? That subpoenaes Mr. Middleworth.

The Master: The subpoena to the company was spread on the record, wasn't it? I mean the one that was served the other day.

Mr. Ransom: That had no relation to the garage.

The Master: It called for all these reports of various kinds.

30508

Mr. Ransom: Not these.

Mr. O'Brien: The Master gave you a direction which was coupled with the subpoena—

The Master: Don't let us waste any more time on this.

Mr. O'Brien: I want the record to show that counsel is splitting hairs, and saying this was only to Mr. Middleworth. That shows the attitude with respect to this, and it shows they don't want this matter gone into.

The Master: The record shows that Mr. Middleworth's department keeps certain records,

30509 some of which he retains in his office; that he keeps certain records in his office, and certain records and reports go to the main office. He has produced all that is in his office, and some have been produced by the main office. Those which have not been produced will be produced. Now, what else do you want with this witness?

Mr. O'Brien: I will ask that this subpoena be spread upon the record.

The Master: I won't permit it; there is no necessity for it.

Mr. O'Brien: I offer in evidence this sub-

30510 poena addressed to Mr. Middleworth or Mr. Goebel.

The Master: Objection sustained.

Mr. O'Brien: With the affidavit of service.

The Master: No.

Mr. O'Brien: Exception. Your Honor has taken two items in the subpoena. There are two others, we might as well make it complete.

The Master: No, I don't want any more.

Mr. O'Brien: I want to indicate just what I have asked him to bring here.

The Master: Do you want anything else of Mr. Middleworth? I have ruled on that paper.

Mr. O'Brien: Will I have an opportunity when they produce those papers to examine him?

The Master: I don't know what use that can be.

Mr. O'Brien: I won't take up much time. I ask that I be given half an hour in which to examine him after we get those papers.

The Master: Mr. Middleworth, leave the stand. When the records come, and you show me what purpose there is in asking Mr. Middleworth any questions, I will decide whether you can recall him or not. 30511 30512

By Mr. O'Brien:

Q. Mr. Middleworth, have you got a bookkeeper at your office?

A. Yes; well, a clerk, we don't keep any books.

The Master: Do you want to ask any questions, Mr. Ransom?

Mr. Ransom: Yes.

Mr. O'Brien: I ask that this paper be marked for identification, the paper from which the witness read.

The Master: What is the necessity for that? You have read off every item, and the witness has read off every report. I won't allow it. 30513

Mr. O'Brien: This is the physical paper, and I want to identify it.

The Master: Do you want to offer it in evidence?

Mr. O'Brien: No.

The Master: Well, it appears in the record already. If you want to mark it in evidence I will let you do it. There is no necessity for further identification.

Mr. O'Brien: Exception. I except to your Honor cutting short this examination.

The Master: Have you anything else to ask?

Mr. O'Brien: You have indicated that after the papers have come I will be given an opportunity, I will be given the right to examine him further only if I show you what I want to ask him about

The Master: Yes. Is there anything else you want to ask just now?

Mr. O'Brien: Well, I prefer to wait until these papers come, because I don't want to go over it again.

39515 The Master: Is there anything you want to ask him now?

Mr. O'Brien: I will ask no further questions now, but wait until the records I have called for are produced to finish my cross-examination.

The Master: Have you any questions, Judge Ransom?

Cross-examination by Mr. Ransom:

Q. Of the number of cars which you referred to as passenger cars, Mr. Middleworth, do you know how many are used in what is called the taxicab service for executive officers, heads of departments and the like in connection with the general office?

39516 Mr. O'Brien: Just a minute. I object to the question as incompetent, irrelevant and immaterial, as assuming something not proven, the use of the words "taxicab service."

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. There are seven.

Mr. O'Brien: May I have that question read again?

(Question read by stenographer.)

Mr. O'Brien: I move to strike that out as entirely too vague. There isn't anything in this

record defining "taxicab service." It is a facile term used by the witness Carter. Also, "and such like," that rural term of Judge Ransom's is also vague and indefinite.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. Do you know how many of these twenty cars are used as street department service or emergency street department cars?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. They allege that the reports which they have produced show the uses 30518
to which these cars are put, and the complainant's counsel, Ransom, made an objection when I sought information of that kind from the witness that the reports were the best evidence and showed the uses to which the cars were put.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Did you say street department?

Q. Street department service and street department emergency service?

Mr. O'Brien: I object to the question as leading and not proper in form.

The Master: Objection overruled. 30519

Mr. O'Brien: Exception.

A. There are eleven.

Q. There are also how many paymaster's cars, if any?

Mr. O'Brien: I make the same objection as before.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I would like to correct an answer I made, your Honor.

30520 Henry V. Middleworth, Cross.

The Master: Correct it.

The Witness: There are six cars assigned to the Street Main Department.

Q. Of those passenger cars?

A. Of those twenty cars.

The Master: The next question was how many paymasters' cars are there?

The Witness: There are two paymasters' cars.

Q. How about the district superintendents?

A. Those are included in the six cars. I am telling you from memory.

30521 The Master: You don't mean to say that although there are seven cars set aside for the taxicab service, so-called, that you never used more than seven for the taxicab service?

The Witness: We never used more than seven for the taxicab service.

The Master: Under any circumstances?

The Witness: Under any circumstances.

The Master: Are they not the same kind of cars that are used for the street department service?

The Witness: They are practically the same type of car; yes, sir.

30522 By Mr. O'Brien:

Q. When did you first get the use of this term "taxicab service"?

The Master: I am not through yet.

Mr. O'Brien: Your Honor is falling into an error. I object to your question because Ransom has brought in here the ingeniously contrived term "taxicab service" to cover these luxurious cars that cost thousands of dollars, and you are taking up that same thing and using that same term in your questions.

By the Master:

Q. What do you mean by the term "taxicab service"?

A. The accommodation service run in connection with the heads of departments, superintendents, and the officers of the general office for emergency work.

Q. That really means the use of a car by heads of departments and officers to go from place to place?

A. Yes, for one hour or two or three hours, or four hours, as the case may be.

Q. The taxicab service, as I understand it, was of passenger cars by heads of departments, officers and 30524
the like?

A. Yes, sir.

Mr. O'Brien: I am going to object to the use of this word "taxicab." It is misleading, and it sounds ridiculous on the record when you apply the name "taxicab" to a luxurious car that costs thousands of dollars.

Q. But that is what you call a taxicab service, is that right?

A. Yes, sir.

Q. That is how it is known in the company?

A. That is the term that is used.

Q. That is the term that the company uses with ref- 30525
erence to these seven cars?

A. Yes.

Mr. O'Brien: Is there any one of these report that shows the word "taxicab"?

The Master: Don't answer the question.

Mr. O'Brien: Exception.

Q. Am I clear that seven particular cars are set aside for this service?

A. Yes.

Q. And only seven of these twenty?

A. That is all.

Q. And if more than seven are asked for by officers and heads of departments they are not given?

Mr. O'Brien: Just a minute. Don't answer that when I put up my hand, Mr. Middleworth. I object to the question as leading, and note an exception to the Master's question.

A. There is very little likelihood that any other cars would be in.

Q. What I want to get at is this: You have twenty passenger cars. You say seven of those are used in this so-called taxicab service. Suppose those seven
39527 cars are in use, and you have another car in the garage, a passenger car, and another car is called for by the head of a department, is it refused?

A. We would not send it except on the order of an officer of the company.

Q. What officer?

A. Either the president or one of the vice presidents.

Q. Who sets aside certain cars for this so-called taxicab service, who makes the distribution between the various departments?

A. Mr. Addicks.

Q. He told you how many to have for the taxicab
39528 service?

A. Yes.

Q. Does he say which cars you shall have?

A. Yes.

Q. Does he assign certain cars to the street service?

A. Yes, sir.

Q. And certain particular cars to the paymaster's service?

A. Yes, sir.

The Master: Go ahead, Judge Ransom. The witness, as I recall it, had accounted for 15 cars, 7 for the taxicab service, 6 in the street department and 2 for the paymasters.

Mr. O'Brien: I don't know what your Honor means by saying that he accounted for them.

The Master: I will tell you about it during the noon recess.

Mr. O'Brien: I except to that comment of the Master.

The Master: Go ahead.

By Mr. Ransom:

Q. Does the number you stated in the street department as 5—

A. 6.

Q. Does that include the so-called emergency service wagon? 39530

Mr. O'Brien: Oh, that is kept up there at 99th Street, and you know it.

A. That does not include the emergency trucks.

The Master: We are talking about passenger cars.

The Witness: We are talking about 20 passenger vehicles.

Q. Can you state what departments or in what work any others of these 20 are assigned?

A. There are two electric runabouts—

Q. For what purpose and by whom are they used?

A. One for the superintendent of the meter repair shop at 111th Street— 39531

Mr. O'Brien: I am going to object to the question, your Honor. I am a little late, but I object to it as incompetent, irrelevant and immaterial. They have produced here these papers, and when I sought to get information of this kind it was objected to. The answer was that the reports show. Now, what are we going to take, his statement or the reports? Am I to go back here for instance, to the street department, Branch No. 1, and G. O., or something else, are we going to rely

upon that, or are we going to rely upon the witness's oral statement in answer to the questions?

The Master: I don't know. Objection overruled.

Mr. O'Brien: I am going to object to it because the reports if they are reliable speak for themselves; if they are unreliable there is no use asking this witness anything about it.

Q. What about the other electric runabouts?

A. One is in the street department, included in the 6; one is for the superintendent of the meter
30533 shop at 111th Street; one electric runabout is for the superintendent of the meter shop at 159th Street.

Q. Now, have you covered all of the 20?

A. I believe so.

The Master: I don't think so.

The Witness: Then I have made a mistake.

The Master: You have got 7 for the so-called taxicab service; 6 in the street department, 2 for the paymasters. That makes 15. One of these electric vehicles is not included in the other—

The Witness: If I can refer to a memorandum I can correct any misstatement that I have made.

30534 The Master: Let us get it right. That is what we are here for.

Mr. O'Brien: Can't you remember these passenger cars after your years with them?

The Master: It is quite apparent that the witness does not recall exactly, and I am going to let him refer to a memorandum.

Mr. O'Brien: Well, it is not apparent, but it is quite surprising to me—

The Master: Well, it is not to me.

Mr. O'Brien: Mr. Carter could tell them to you himself. I am sure.

Mr. Ransom: He did tell it, and you had it stricken out.

The Witness: 6 for the street department is is correct. 7 for the taxicab service is correct. 2 for the paymasters. I have passenger and commercial vehicles mixed in here so I have got to go slow.

Mr. O'Brien: I assume that some one of these reports would refresh his memory.

The Master: Leave him alone.

Mr. O'Brien: Here we have all kind of reports that are supposed to tell this story. 30536

The Master: Leave him alone.

The Witness: 2 for the meter department; 1 for the gas appliance department. In my statement of 20 cars I included 2 cars that have been recently purchased but not yet placed in service.

The Master: What are they for?

The Witness: One is for the paymaster's department to replace one which is worn out. One is for the general office taxicab service to replace one which is ready for the scrap heap.

Mr. O'Brien: When were they bought?

Mr. Ransom: I object to the interruption.

The Master: That is not an interruption, I will let him say. 30537

The Witness: Within the last month.

Mr. O'Brien: What were they, Cadillac touring cars?

The Witness: One of them was a Maxwell and the other a Hudson.

The Master: We are talking about 1919, that is what we were talking about when you were asked about how many cars you had in service.

The Witness: Then I would have to retract, because there were not 20 cars in service in 1919.

There are 20 cars in service now. I understood him to ask how many we have at the present time.

The Master: Now, let Judge Ransom finish his cross-examination.

By Mr. Ransom:

Q. Of the 7 cars in the so-called taxicab service—

Mr. O'Brien: If you would omit that term you would do me an awful lot to please me. Put that term in quotation marks, Mr. Stenographer.

Q. How long has the company used that term in
39539 connection with its assignment of cars?

A. Six years.

Q. Of these 7 cars will you state what kind of cars they are and about when they were bought, if you recall?

Mr. O'Brien: Oh, I think we had better get the record on that. Haven't you got a book that shows these things. Haven't you got any of these records that give those details?

The Master: Mr. O'Brien, you must not interrupt. If you have an objection to make, make it and I will rule on it.

Mr. O'Brien: I am putting an idea into the
39540 Master's mind, that maybe these will help us.

The Master: The Master's mind is so full of ideas, gas and otherwise that it can't hold much more.

Mr. O'Brien: Isn't it to be expected that there will be some record containing the story?

The Master: Let the witness state.

A. There is one Packard, 1915 Model; there is another Packard, a 1910 Model that is about worn out; there is one Oldsmobile, a 1910 Model; there is one Cadillac, a 1912 Model.

Q. Are there any Ford runabouts?

Mr. O'Brien: Oh, let the witness state. I am going to see just whether his memory is fresh on this or not. It was weak on a number of other things and he had to refresh his memory. I don't want him catechised and told things while he is answering this question. Go ahead and give us the whole twenty.

The Master: The assistant master is now taking charge of the witness.

The Witness: There are two Maxwells, 1916 Model, I believe.

Q. That covers the seven? 30542

Mr. Ransom: That is all.

The Master: Anything else, Mr. O'Brien?

RE-DIRECT EXAMINATION BY MR. O'BRIEN:

Q. Can't you tell us about the whole twenty?

A. I presume I can.

Q. Can't you tell us whether they are Cadillac touring, or how many of them were Maxwell cars?

A. By referring to a memorandum I can.

Q. Take some one of the reports here or this data that has been brought here, won't you, and tell us? Have you the insurance list here? That will tell us what they are.

Mr. Ransom: I object to the question, if it is a question, or the harangue, if it is a harangue. 30543

Q. Go ahead, Mr. Middleworth, get the whole 20 out and tell us what kind they are, Cadillacs or Maxwell touring, or whatever they may be.

A. I would have to refer to a memorandum to answer that.

Q. Do you get up an insurance list?

Mr. Ransom: I object to that.

The Master: Let him refer to his memorandum and answer the question. Let him alone.

Mr. O'Brien: He said he had the commercial cars mixed up with these a minute ago, and I am

afraid he is going to get into the same confusion again.

The Master: He is trying to unscramble it for you.

Mr. Ransom: I object to this continuous and insistent effort on the part of counsel to confuse the witness.

Mr. O'Brien: I usually have some purpose in my question, your Honor.

The Master: I have never charged you with not having a purpose. What I have frequently said is that I think it is a useless purpose.

30545

A. It would be rather difficult for me to separate the different makes of cars.

The Master: Let me see if I can help out here.

Q. Let me ask you why you remembered so well those that were on the scrap heap, and those of later model you can't remember?

By the Master:

Q. Mr. Middleworth, you have 20 cars now?

A. Yes, sir.

Q. You are seeing them every day?

A. Yes, sir.

Q. In and out from time to time?

30546

A. Yes, sir.

Q. How many Maxwells have you got?

A. Including the commercial vehicles, which are in the record, there are 21.

Q. You don't recall just how many of them are passenger cars?

A. Of those 21 I believe there are 7 passenger vehicles.

Q. How many Cadillacs or Hudsons or Fords or anything else?

A. There is one Hudson car.

By Mr. Chambers.

Q. What model?

A. That is a new one.

By the Master:

Q. Go on.

A. There are 13 Cadillac cars including the commercial Cadillacs. The emergency trucks are built on a Cadillac chassis.

Q. Give us the best answer you can give us of the number used in the passenger service?

A. There are 3 1912 Cadillac cars used in the passenger service. 39548

Q. Take the next.

A. There is one Oldsmobile used in the passenger service, 1910 Model. That is all the passenger vehicles.

By Mr. O'Brien:

Q. You only remember those that are of the 1912 or 1910 vintage?

The Master: You need not answer that question. Is there anything else you want to ask the witness?

Mr. O'Brien: Did you bring out, your Honor, the years of the models of the several cars?

The Master: Yes, it is all in the record. 39549

Mr. O'Brien: No, he gave 21 Maxwells.

Q. Will you state now the years of the Maxwells?

The Master: The question will not be allowed, it is sufficiently covered.

Mr. O'Brien: Exception.

Q. Will you give us the years of the Cadillac machines?

The Master: The question is not allowed, it is sufficiently covered.

Mr. O'Brien: Exception.

Q. Will you give us the years of the other cars that are in the passenger service?

The Master: Not allowed. It is sufficiently covered.

Mr. O'Brien: Exception.

Q. Have any persons ever spoken to you about favoring the Maxwell car?

A. No, sir.

The Master: Who buys the cars?

The Witness: I requisition for them.

The Master: For any particular make?

The Witness: Yes.

Q. Has anybody ever told you, Mr. Middleworth,
39551 to recommend or requisition Maxwells as against some other car?

A. No.

Q. Do you know who are interested in your company in the Maxwell car?

Mr. Ransom: I object to that as assuming a state of facts not proven.

A. I do not.

By the Master:

Q. Do you know that anybody is?

A. In the company.

Q. Yes.

A. No.

39552 Q. Did you ever hear of any person, any officer or employee of the company being interested in the Maxwell car?

A. No, sir.

Mr. O'Brien: I am objecting to your Honor's questions and taking an exception.

By Mr. O'Brien:

Q. Have you a memorandum there that gives us the names of each one of these 20 cars, their makes and the years of their models?

A. No, sir.

Q. Did anybody tell you to bring that?

A. No, sir.

Q. Did anybody tell you to mention just the old ones that are on the way to the scrap heap?

A. I mentioned all of them.

Q. And you have given us the years of each one of them, have you?

A. I think I have.

The Master: Used in the passenger service?

The Witness: Yes, sir.

Q. You think you have given us a complete record of that?

A. I am quite sure.

Q. Is there any record in your office that shows the 39554
details of these cars, when they were purchased?

A. No, sir.

Q. When they were repaired?

The Master: Oh, we have gone all over the repair business. They are millions of records here on repairs.

Q. Will you give me a list, or enumerate all of the passenger cars that are not used in the passenger service, that are used, as you say, commercially?

A. Yes.

Q. Go ahead?

The Master: I won't allow it.

Mr. O'Brien: You won't allow that to be 39555
given?

The Master: No, I think we have had enough of this.

Mr. O'Brien: Well, this is very fruitful to the defendants.

The Master: I think it is very useless to the case.

Mr. O'Brien: Well, I insist upon my rights to ask the question and take an exception to your Honor's ruling, if you do not reverse it.

The Master: I am going to let Judge Ransom

ask one more question. He said he had one more question. What is it?

Mr. Chambers: And you mean not let us ask any more?

The Master: I said I would let Judge Ransom ask one question.

Mr. Chambers: Exception.

By Mr. Ransom:

Q. Of the Maxwell cars, outside of the passenger service, the passenger type of Maxwell car, have many of them been partially rebuilt with a box on the back
39557 to carry materials for the foremen in the street department, and so on?

A. Yes, sir.

The Master: That is all I am going to take on this.

By Mr. O'Brien:

Q. In order that we may have this record with some degree of completeness, you have here on your chauffeur's register, Mr. Middleworth, a number given to a car. I assume that they are your own garage numbers?

A. Yes.

Q. You designate each car by a number for the pur-
39558 poses of your records?

A. Cars are identified by number, all of them.

Q. Is that a number that you have placed on them?

A. That is a number they are known by from the time they are purchased until they have finished their service.

Q. Then where we find No. 41, or 44, or 109, or greater or lesser numbers we will assume that there are that many cars in the garage?

A. No, sir.

Q. Then how do you work that?

39559

A. The cars are numbered consecutively from 1, the passenger vehicles from 1 to 50. If a car is disposed of that number is not used again for an automobile.

Q. Well, you keep on adding numbers, you never go back to 3 or 33?

A. No, sir, it is the same with the commercial vehicles. If 41 is worn out and broken up for scrap and disposed of as unfit for service, No. 41 is never used again.

The Master: There is no 41 then?

The Witness: There is no 41.

39560

Q. You just keep adding the numbers so that, to illustrate, when these new Maxwells come in they will be given some number that will be up in the 200's, will they?

A. Oh, no.

Q. You don't give the number 200 to a car that is dead, do you?

A. No.

Q. You give it a new fresh number?

A. Yes, but they won't run anywhere near 100.

Q. Well, I call your attention to 107?

A. Yes, sir.

Q. Here is one, 105?

39561

A. Yes, sir.

Q. What is your highest number now?

A. 113.

Q. Mr. Middleworth, you give these numbers to the cars for the purpose of arranging your records?

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. Now, will you tell me of all these records here where I can get the history of the car so far as the engine number is concerned and the license?

A. I have that record.

Q. Where is it?

A. In the office.

Q. Kept in a book?

A. It is kept on loose leaf sheets.

Q. And that covers all of the cars up to August, 1919?

A. Oh, yes.

Q. And you can produce that?

A. If necessary, yes.

Mr. O'Brien: I will ask that that be produced.

The Master: Yes.

Mr. Ransom: We had the same information here on the insurance schedule some months ago.

39563 Mr. O'Brien: Was that received in evidence?

The Master: I think it was one of the documents that Mr. Middleworth should have produced from his garage records.

The Witness: That was overlooked.

The Master: Well, I say it is one of those you should have brought.

Mr. O'Brien: That is all at this time.

The Master: Next witness. Mr. Middleworth, can you telephone down for this other report, or have you got to go down and get it yourself?

The Witness: I can get it up in half an hour.

The Master: Have it here at two o'clock. Be

39564 back here at two o'clock.

Mr. Chambers: May I note on the record that Mr. Hine has been sitting in court here from day to day waiting to be cross-examined. He has been here since Monday.

The Master: Mr. Birdsley.

WILLIAM R. BIRDSLEY recalled:

CROSS-EXAMINATION CONTINUED BY MR. RANSOM:

Q. When you were on the stand earlier this morning, I handed you 8 of the sheets of Mr. Hirschewitz?

A. Yes, sir.

Q. Later I handed you 9 sheets in the same period covering computations made by Mr. Hillig, Mr. Frank and Mr. Straus. I ask you, have you now computed under your method and according to your tables the corrected illuminating power found on these various tests?

39566

A. I have.

Q. Assuming that these various inspectors had correctely noted the gas consumption, rate per cubic feet, and the time of burning 40 grains—

The Master: All the various items.

Q. How many of these did you find were correctly computed by the inspectors?

Mr. Chambers: I object to asking him to draw a conclusion. Let him state what he found.

The Master: Objection overruled. I will first take how many he found to be correct.

Mr. Chambers: Well, it may be he will say they are all accurate.

39567

Mr. Ransom: Maybe he won't.

The Master: If he does, that will dispose of it very quickly.

The Witness: I would like to take them up one by one.

The Master: All right, go ahead.

A. I found that the report of Inspector Hirschewitz on June 3, 1918, Branch 3, the difference between my computation—

The Master: Is it correct or incorrect?

Mr. Chambers: I object to that, asking one witness to pronounce judgment on another, his way of figuring it.

The Master: Is the result correct or incorrect. Objection overruled.

Mr. Clark: I except.

Mr. Chambers: Exception. I don't think that is the right way—

The Master: I know you don't. I have overruled your objection.

39569 Mr. Chambers: I don't think it is right to ask Mr. Birdsley to pronounce judgment on another man's figures when he don't know how the other man figured it.

Mr. Clark: If the question were whether his figures agree with Mr. Hirschewitz's figures, that is another thing.

The Master: I want Mr. Birdsley to say whether Mr. Hirschewitz correctly reported the illuminating power on June 3, 1918, according to the tables in evidence, according to the information placed upon this sheet.

Mr. Chambers: Exception.

39570 The Master: What is your answer.

Mr. O'Brien: Don't be so cross with him, your Honor. You don't know how incisive you are.

The Master: I am not cross at all.

Mr. O'Brien: You are sitting just a foot away from him, and you say, "What is your answer," in that choppy way. It is like the other day, when poor little Straus was sitting in between you and me, and we conducted a talk over his head, you and I, and you expected that the boy was going to have a computation made. Why, you couldn't get Mr. Teele in here and get a computation made under those circumstances.

The Master: Why, I could have done it with you talking over my head or under my feet.

Mr. Chambers: How can you ask Mr. Birdsley to say whether another man's figures are correct or incorrect?

The Master: I won't hear any more discussion, I want him to say whether the figures are correct or incorrect.

The Witness: I would say that Inspector Hirschewitz's computation in this case—

The Master: On June 3, 1918?

The Witness: June 3, 1918—excuse me, you 39572
are asking me whether the computations or the results are correct?

The Master: Whether the result is correct, the corrected illuminating power.

The Witness: It is substantially correct.

The Master: Is it correct?

Mr. Ransom: I move to strike out the answer.

Mr. Chambers: Now, I think that is a proper answer.

The Master: Well,, I don't. Is it correct?

The Witness: I say it is substantially correct.

The Master: No, I want to know whether it is or is not correct. We will leave out "substan- 39573
tially."

Mr. Chambers: I object to that and take an exception.

The Master: Is it or is it not correct, Mr. Birdsley?

Mr. Chambers: How is it proper to ask one witness to take the figures of another man—

The Master: I have ruled on it, Mr. Chambers, don't persist.

Mr. O'Brien: But, your Honor, all the way through this case we have been carrying out decimals to three or four places, and then we stop.

Mr. Clark: It may be that it is not possible for him to say whether it is correct.

Mr. O'Brien: If we went into that, if we carried it out three or four decimals you would say, "That is a perfectly useless question, we will take the common ordinary practices of human life, we don't deal with four or five or six or seven or eight decimal points." Men that are doing that are on Ward's Island, some of them, although there are a few running around New York at large.

30575 The Master: Are you gentlemen all finished?

Mr. Chambers: Yes, I take an exception.

Mr. Clark: I take an exception.

Mr. O'Brien: Exception.

The Master: Is it correct?

The Witness: It would not be correct according to my tables.

The Master: What is the variance?

The Witness: The variance is .02 of 1 candle power.

Q. What figure did you get per candle power, the corrected figure for that test sheet?

A. 21.75, using the set of tables that I have.

30576 Q. Do you say that the 21.75 is correct according to these same tables?

A. According to the tables, yes.

The Master: Have you these calculations all written out?

The Witness: Yes, sir.

Q. Are the tables correct?

A. As far as I know they are correct.

The Master: All right, take the next one.

Q. Take June 7th. Is that correct or incorrect, Mr. Hirschewitz's figure?

A. It would not be correct according to the tables which I have used.

The Master: What do you get on the 7th of June?

The Witness: I get 20.51 candle power. My calculation as compared with his has a difference of .01 of a candle.

Q. On the 24th of June what do you get?

A. I would not care to make any statement on that. The sheet seems to have been marked over.

The Master: What?

The Witness: That sheet has been marked over.

The Master: Where? 39578

The Witness: The "5" has been changed and the "7" has been changed.

The Master: But his observations have not been changed.

The Witness: No.

The Master: Well, figure it according to his observations. We will pass it for the minute and come back to it.

Q. Take the first day of July, 79th Street?

A. Mr. Hirschewitz at 79th Street found 17.53—

Q. No, I ask you whether his figure is correct?

A. It would not be correct according to the tables which I have. 39579

The Master: Give me the variance.

The Witness: The difference between the test—I found 17.60, which is a difference of plus .07 of a candle.

The Master: Next one?

Q. July 10th, is Mr. Hirschewitz correct, is it correct as computed by Mr. Hirschewitz?

Mr. Chambers: This is all over my objection and exception.

A. It would not be correct according to the tables I have used.

Q. What variance would you make?

The Master: What do you make it?

The Witness: I find it minus .1 of a candle.

The Master: What do you make it

The Witness: 17.31.

Q. Take July 15th, Mr. Hirschewitz, at 79th Street, is that correct or incorrect?

A. It is not correct according to the tables I have used.

Mr. Chambers: I take an exception to this.

The Master: What do you make it?

30581 The Witness: 17.02, a difference of .23 of a candle.

Q. Take August 1st, Mr. Hirschewitz at 79th Street, is Mr. Hirschewitz's figure correct or incorrect according to your computation?

A. It is not, according to my tables.

The Master: What do you make it?

The Witness: 19.10, a difference of plus .04 of a candle.

The Master: Next one.

Q. Take November 25th, Mr. Hirschewitz at 79th Street, is his figure correct or incorrect, according to your computation?

30582 A. It is incorrect according to my tables.

The Master: What do you make it?

The Witness: I found 18.16, a difference of .16 of a candle, minus.

The Master: Now, take this one of July 24th and compute it after we get through here.

The Witness: Your Honor, in the case of this, I would like to state that the addition under the column of observations is correct.

Mr. O'Brien: You are referring now to June 24, 1918?

The Witness: Yes, sir.

30583

Mr. O'Brien: Of Inspector Hirschewitz?

The Witness: Yes. The figure underneath, the figure 8 seems to have been marked over by a 7.

The Master: I don't care about that. You reach your total of the minute observations, disregard his average and disregard his observed illuminating power, that is, the total of the average. Just give us what you think it ought to be on those observations.

Q. Now, let us take September 11, 1918, Mr. Hillig at Grand Street. Is his computation correct or incorrect according to your computation? 30584

A. It is incorrect according to my computation

Q. What do you make it?

A. 15.31, a difference of plus .04 of a candle.

Q. It should be that much higher?

A. It should be that much higher. Of course there are minus and plus.

Q. When you say plus you mean that the reported candle power by him was too low, and when you say minus, you mean it was too high?

A. Yes, sir. I failed to state in some cases what was minus and what was plus.

The Master: State it. 30585

The Witness: On June 3rd the inspector's candle power as reported was higher than my calculation.

The Master: By what?

The Witness: .02 of a candle.

The Master: Next date?

The Witness: On June 7th it was .01 of a candle power lower than my calculation.

On July 1st it was .07 of a candle power lower.

On July 10th it was .1 candle power higher.

On July 15th it was .23 candle power higher.

39586 William R. Birdsley, Cross.

On August 1st it was .04 candle power lower.

On November 25th it was .16 candle power higher.

The Master: Now, go to September 11th.

The Witness: On September 11th, the inspector's test was .04 candle power lower than my calculation.

Q. Now, September 9th, Mr. Hillig at Grand Street, was the figure produced by his computation correct or incorrect according to your computation?

A. Incorrect, according to my computation.

39587 The Master: What do you make it?

The Witness: I make it 14.95.

The Master: His is 14.90.

The Witness: His computation was therefore .05 candle power lower than mine.

Q. Take September 10th, Mr. Hillig, at Grand Street, was his computation correct or incorrect, according to your computation?

A. Incorrect according to my computation.

Q. What did you find?

A. I found 14.62, his computation being .02 candle power higher than mine.

Q. Take September 4th, Mr. Hillig, at Grand

39588 Street, was his figure, the figure produced by his computation, correct or incorrect, according to your computation?

A. Incorrect, according to my computation.

Q. What was the variance?

A. I found 13.37. My computation gives .01 candle power lower than his.

Q. October 31, Mr. Hillig at Grand Street, was his computation correct, or incorrect? According to your computation.

Mr. Chambers: I make the same objection and exception.

A. Incorrect according to mine.

Q. What variance did you find?

A. My computation showed 14.26, being .13 candle power higher than his.

Q. March 9, 1918, Grand Street, Mr. Frank, was his computation correct or incorrect according to your computation?

A. Incorrect according to my computation.

Q. What variance did you find?

A. I found 22.24, which was .04 candle power higher than his computation.

Q. April 1, 1918, Straus at Grand Street, was his 39590
computation correct or incorrect according to your computation?

A. Incorrect according to my computation.

Mr. Chambers: I make the same objection and exception.

Q. What variance did you find?

A. I found 22.80, which was .02 candle power higher than his computation.

Q. February 8, 1918, Frank, at Grand Street, was his computation correct or incorrect according to your computation?

A. Incorrect according to my computation.

Q. What variance did you find? 39591

A. I found 21.05, which was .04 candle power higher than his computation.

Q. August 8, Grand Street, Straus, was his computation correct or incorrect according to your computation?

A. Incorrect according to my computation.

Q. What variance?

A. I found 18.46, which was .02 candle power higher than his computation.

Q. What temperature did you find on this last one?

A. 89.

Q. Will you recheck that first one.

A. Yes.

Mr. Ransom: I am frank to say to your Honor that many of the figures computed by our men do not agree with either the figures of the witness or the inspectors' figures.

Mr. Chambers: Wait until we show yours.

Mr. Ransom: No, I mean our computation from these test sheets.

Mr. Chambers: I mean your own candle power.

30503 Mr. Clark: They are always high.

The Master: Compute that one there, will you, June 24th?

Mr. Chambers: I call the Master's attention to the fact that it is approaching the fatal hour of one o'clock.

The Master: Let Mr. Birdsley finish what he is at.

Mr. Chambers: I don't want to be shut off.

The Master: Is that correct according to your computation, June 24, 1918?

The Witness: It is not.

The Master: What do you make it?

30504 The Witness: I make it 18.40 candle power.

The Master: And what did Hirschewitz make it? 18.20?

The Witness: Yes, sir, my computation is .2 candle power higher than his.

Q. These tables which you have used are the tables, the original tables produced by you and marked in evidence as exhibits in this case?

A. Yes, sir.

Q. Will you just check over your computation on Hirschewitz's of June 3, and see whether you are sure that you are accurate in the figure you have, the first one?

(Witness makes computations.)

A. It is correct.

Q. What is your figure?

A. 21.75 according to these tables.

Mr. Ransom: I think that is all. I have a great number of these. After our inspectors have finished their computations I will let Mr. Birdsley look at them and see if he agrees with them.

The Master: All right.

By the Master:

Q. There is one thing I want to ask you, Mr. 39596
Birdsley, while you are here. As I get it, a comparison is made between the illuminating power of the gas light compared with the illuminating power of the candles, is that the idea?

A. Yes, sir.

Q. When the inspector finally concludes that he has got the gas to the point where it compares with the candle, he observes the illuminating power of what, the candle or the gas?

A. He observes the illuminating power of the gas.

Q. In other words, it is 8 something, or 9 something, or 10 something, whatever it may be, as the indicating illuminating power of the gas when it 39597
is compared with the candle light, is that the idea?

A. You are referring to the term "observations"?

Q. Yes.

A. It does not refer to anything as far as the candle is concerned. It refers to the ratio of the two lights only, as calculated on the inverse squares.

Q. What I am getting at is this: I have never seen one of these instruments, and I don't know much about it. You have here the observed illuminating power, haven't you?

A. Yes, sir.

Q. And then that is corrected into the corrected illuminating power?

A. Yes, sir.

Q. Now, there is an observation each minute?

A. Yes, sir.

Q. What is that observation, of what, the candle light or the gas light?

A. It is simply a comparison of the two lights under observation as calculated according to the inverse squares.

Q. What is the observed illuminating power?

39599 A. The observed illuminating power is the observed illuminating power multiplied by two in this particular case.

Q. If you had one candle you would not multiply by two, would you?

A. No, sir, the reading would probably be 19.50.

Q. Let us assume one candle, and you observe 19.50. Is that observation of the candle light or of the gas light?

A. It is a comparison of the two lights, and indicates a point on the bar where the intensity of the two lights is equal.

Q. Why do you call it observed illuminating power if it is simply a comparison?

39600 A. That term has been used for a long time.

Mr. Clark: That is what it is.

Q. Well, is it? You said it is not the observed illuminating power.

A. Yes, sir, it is the observed illuminating power, all right.

Mr. Clark: The power of the light varies with the square of the distance, and is based on that. Isn't that correct?

The Witness: After we have observed the illuminating power then we convert that observa-

39601

tion in accordance with whatever standard we may have. We could take a Pentain lamp, or any standard, and it has a certain illuminating power which is indicated in candles.

Q. Isn't this 19.50 candles?

A. That 19.50 is not candles, no, sir, not as you take the readings off the bar.

By Mr. Clark:

Q. Is it not the fact that this bar really measures the distance, isn't it correct to say that this bar really measures the distance or converts the distance from the film, or whatever is used to measure the 39602
light, the distance from the two lights, isn't that the way you get comparative intensity, by the distance from this screen that the two lights are at the time you take the observation? The intensity of the light varies with the distance, doesn't it?

A. The bar is graduated in accordance with the inverse squares.

Q. What do you mean by that?

A. The light varies inversely as the square of the distance, and we establish a certain unit. That unit we will have to call, of necessity, 1. We put that in the center of the bar.

By the Master: 39603

Q. Maybe I can get what I want putting it another way. What does this 19.50 measure in any form, the gas or the candle light?

A. Of course that would measure the gas light as compared with the candle light.

Q. That is what I mean, it measures in a way the gas light?

A. Yes, sir.

Q. As compared with the candle light?

A. As compared with the candle light.

Q. Your comparison depends entirely upon how close the accuracy of the vision is, doesn't it?

A. Well, of course the operator's eyesight would enter into the matter.

Q. For instance, suppose the gas when it is observed at 19.50 is not quite up to the intensity of the candle light—do you see what I mean? Would it be less than 19.50 then? Do you get my point?

A. I don't get that, no, sir.

Q. As I understand it, this 19.50 is the observation when the observer believes that the candle light is
39605 of the same intensity as the gas light—is that correct?

A. He takes these readings off the bar when he has adjusted this sight box at the point where the intensity of the two lights appears equal.

Q. Now, we start off with the proposition that these observations are taken at a point here the observer believes they are of equal intensity?

A. Yes, sir.

Q. Now, suppose the gas is lower in fact than the candle light intensity, would that reduce the observation?

A. Not in this particular case, because this indi-
39606 cates what the gas is as compared with the candles, this is simply the observation, and indicates a point on that bar where the intensity is equal.

Q. I may be stupid, but I don't get it clear. I start off in my own way with this simple proposition, that your observation depends upon the observation of equal intensity—am I right about that?

A. We start off to find a point—

Q. Am I right about that, that the whole observation depends upon the observer's judgment of equal intensity?

A. All those ten readings before you strike the average, yes.

Q. Take any one reading, each reading depends upon equal intensity?

A. Yes, sir.

Q. Now, take one reading, the reading is based upon the judgment of the observer of the equal intensity, is that correct?

A. Yes, sir.

Q. Now, if there is an unequal intensity there is a difference in the reading, isn't there?

A. Well, there can't be any unequal intensity if the operator makes a judgment of equal intensity. The observation of equal intensity is the point at 39608
which the operator takes the reading.

Q. What I am trying to get at is this, and I am going to get it somewhere or somehow.

Mr. O'Brien: What do you mean by that, that you are going to get it somewhere or somehow?

The Master: Watch me and see.

Q. What happens if the judgment of the operator is wrong, how does it affect the observed figure? That is what I am trying to get at?

A. If his judgment as to the intensity of the two lights would be different from another person's judgment, there would be just a difference, that is all.

Q. What I am trying to get at is this: What I 39609
want to know is, if the gas light is in fact of a greater intensity than the candle, would the observation, assuming that the observer is wrong in taking them at equal intensity, be too low or too high?

A. I am afraid, your Honor, that you have got the wrong conception of this.

The Master: No, I haven't got the wrong conception. I haven't got the wrong conception of what I want.

A. Probably I don't understand.

Q. I may not have made myself clear, but I have a correct conception of what I want.

Mr. O'Brien: What do you mean by what you want?

Mr. Chambers: I wish you would state what it is you want.

The Master: If you gentlemen will be quiet I think the witness and I can get what I want.

Mr. O'Brien: What is it that you want, are you trying to convince the witness that he is wrong and that you are right?

39611 Q. We will take "x" as the point of equal intensity, this being the candle and this being the gas light (illustrating).

A. If the distance is equal.

Q. I am taking equal distances and equal size of lights.

A. And assuming that the two lights under observation are of equal intensity, then the central point between these two lights would be the point of equal intensity.

Q. Now, taking all these factors that I have given, we will assume that the observer observes 9.7.

A. It could not be 9.7 if it was an equal distance

39612 between the two places.

The Master: What would it be?

The Witness: It depends upon the distance between the two.

The Master: Assuming the distance to be unequal, and you get 9.7, the intensity is equal, isn't it?

The Witness: The intensity of the two lights is equal at the point of determination of the intensity.

Q. All right, now, we are taking the basis of equal intensity of the two lights, and then you observed

9.7, and now with our lights in the same position, increase the actual intensity of the gas, how will it affect the 9.7?

A. You would get a higher reading.

Q. You would get a higher reading?

A. Yes, sir.

Q. Then the observer's report of 9.7 would be low if he misjudged the intensity of the gas, is that correct?

A. That is, if he kept it in the same place?

Q. I am asking about an error of judgment, a pure error of judgment, what effect will it have upon my figures? In spite of the fact that counsel for the defendants make wild speeches around here, they know perfectly well what I am getting at. 39614

Mr. O'Brien: As I understand it, what you are trying to do is to emphasize the human element in this computation.

The Master: I am not trying to emphasize anything. I am trying to find where I am at, and the witness has at last given me what I had been trying to get.

Mr. O'Brien: Of course, you are doing this over my objection.

Mr. Chambers: And mine, too. 39615

Mr. O'Brien: I am not by my silence assenting to your cross-examining this witness, and arguing with him.

Q. The same illustration that I used before, if the reader had misinterpreted the candle light, it would of course reduce the intensity, the comparative intensity of the gas, and then his reading would be too high, wouldn't it?

A. His reading of course would be too high.

Q. So that if the observer is in error in determining the intensity of the light being equal, it will go

up or down depending upon whether he misjudges the intensity of the gas light as compared with the candle light, is that correct?

A. It would either favor the company or otherwise.

By Mr. Clark:

Q. Do you consider that a fifteen-minute interval is ample between tests on the different risers in the same station?

Mr. Ransom: I object to that as incompetent. The witness said it was a physical impossibility.

39617 The Master: Objection sustained on that ground. He said it was a physical impossibility. The record shows what he said.

Mr. Clark: Exception.

The Master: The Master states that that is what the record shows.

Q. What did you mean by its being a physical impossibility, Mr. Birdsley?

Mr. O'Brien: I would like to have that paper marked for identification.

The Master: What paper?

Mr. O'Brien: The paper which you have been showing the witness, and which you have made

39618 the basis of your argument with him.

The Master: That is so stupid that it is laughable. It will not be marked for identification or otherwise.

Mr. O'Brien: Exception.

Q. What did you mean by its being a physical impossibility, Mr. Birdsley?

Mr. Ransom: I object to that as incompetent.

The Master: I will allow him to state by that.

A. What I meant by physical impossibility, of course I may have made the term very broad. It

takes ten minutes to make a test, approximately. In some cases it takes less than ten minutes, but not less than nine and a half minutes. The operator, then, after he has stopped his meter and made his readings, would consume probably about two or three minutes. Then he lights up the gas at the burner for the next gas, if he has more than one, and proceeds to calculate that test. Now, the time elapsing from the time that the second gas is lit until the time of the next test should be between 5 and 10 minutes in order to purge the gas out of the meter which may possibly have remained from the test previous. 39620

Q. Between 5 and 10 minutes?

A. Between 5 and 10 minutes; I would consider that sufficient.

Q. Would you say that a test made in 15 minutes was unreliable?

A. No, I would not say it is unreliable.

Q. What effect would the shortening of the time to 5 minutes have on the test?

A. The possibility that the gas from the previous test had not been thoroughly purged out of the meter, and as a result you would get a mixture of the two gases, and as a consequence the result of the test would not indicate the true candle power of the gas supplied on the second test. 39621

Q. Can you account for any of the differences you found between your calculations and the calculations of the other men?

A. Oh, yes.

The Master: You can account for it—what is your explanation?

The Witness: Why, in a great number of cases the men simply took the logarithm before or after the one they should have taken, and that made an infinitesimal difference.

39622 William R. Birdsley, Cross.

Mr. Ransom: They are all claimed as violations, reported as such.

The Witness: In some cases the inspector favored the company as much as he found them under.

The Master: That will be stricken out, because the record speaks for itself.

Mr. Chambers: I object to that, I think it should be in. I take an exception.

Q. Mr. Birdsley, are the instruments at 79th Street and at Grand Street equally efficient in your judg-
39623 ment?

A. They are.

Q. Are they both proper apparatus for testing gas with reference to illuminating power, and is the form of operation prescribed a suitable one for using such apparatus?

Mr. Ransom: I object to that as incompetent. We are not interested here in the question as to what is proper or what is suitable. We are interested in whether it is a test made in the manner provided by the statute here under attack.

The Master: Objection sustained.

39624 Mr. Clark: Exception.

Mr. O'Brien: Your Honor, how would you construe the term "suitable"? It spells out discrimination in somebody.

The Master: I am of the opinion that that provision hasn't anything to do with this. I will let Major Clark ask, so he will understand my ruling, and so you will understand it, whether this apparatus did test the gas upon the basis required by the statute.

Mr. Ransom: I don't think he can pass on that. I think the City had the right to use any

method it pleased that it regarded as suitable, but when—

The Master: I will let the witness say whether this apparatus does measure the candle power in the manner, and that is, get the results—I am going to let this witness give as his opinion whether the apparatus he has described, used as he has described, tests the candle power—without repeating the statute, I am taking a short cut—you remember the language of the statute, 120 grains per hour, etc.?

The Witness: Yes, sir. 39626

The Master: I will let the witness state whether it is his opinion and his contention that it does measure the gas in accordance with that requirement, that is, whether this apparatus measures the gas in accordance with that requirement.

Mr. Ransom: It is over my objection and exception.

The Witness: We do test the gas in accordance with the requirements of the statute.

The Master: I don't mean a suitable instrument, or anything of that kind, but whether you contend, and it is your opinion that the apparatus used at 79th Street and at Grand Street, 39627 measures the gas, using candles burning 120 grains, six to the pound, five cubic feet to the hour, and whatever other elements there may be in it, do you say that it is correctly measured by this apparatus?

The Witness: I do.

The Master: I will take his opinion.

Mr. Ransom: Exception.

By Mr. Clark.

Q. Does the cutting of the candles in two, as has been your custom, affect the illuminating power given by the candles?

Mr. Ransom: I object to that question. The witness does not know in what manner these boys used their jackknives.

The Master: We have been over that. The opinion of the witness is that by cutting the candles and using two candles, and making the additions and subtractions, etc., you get the same result. That is your claim, isn't it?

The Witness: Yes, sir.

Mr. O'Brien: That is your opinion, is it, Mr. Birdsley?

39629 The Witness: It is.

The Master: I think it has been sufficiently covered.

Mr. Clark: I asked the question of one other witness, and your Honor said he was not qualified. That is why I am asking Mr. Birdsley. That is the claim they have been making that because they cut the candles in two these tests are no good.

The Master: I will let you ask him whether having two lights, two candles, makes any difference.

Mr. Ransom: That assumes that these candles

39630 are cut accurately.

Mr. Clark: The even cutting of the candles would not affect the light given.

Mr. Ransom: Here is a candle balance on which candles burn at different rates.

Mr. Clark: It is the number of grains of spermaceti burned, it does not make any difference how heavy they are when they are put on the bottom.

The Master: We will take it up at two o'clock. Have you any tables ready?

Mr. Chambers: Yes, I call Mr. Maltbie.

39631

The Master: All right, we will have them at two o'clock.

Mr. Ransom: Have you any other tables, Major Clark?

Mr. Clark: Yes.

The Master: All right, we will take them at two o'clock.

Mr. Chambers: Will you extend that a little bit so we can have an opportunity—

Mr. O'Brien: I will be with you at two o'clock also.

Mr. Chambers: Can't you make it 2:30?

The Master: I will make it 2:15. 39632

Mr. Maltbie: I have to be downtown at 2:30.

The Master: Then we will take Mr. Maltbie's table now.

Mr. Chambers: I want to state on the record that I have not had a chance to go over this.

The Master: Do you want to come back, Mr. Maltbie?

Mr. Maltbie: Yes, I can do that.

The Master: When can you get back?

Mr. Maltbie: I can get back later in the afternoon.

The Master: What time can you get back, by 4:30? 39633

Mr. Maltbie: Yes.

The Master: All right.

Recess until 2:15 P. M.

Afternoon session.

WILLIAM BIRDSLEY, resumed.

By Mr. CLARK:

Q. Mr. Birdsley, can you state whether it affects the rate of burning of the candles, or the illuminating power of the candles, to cut them in two as you have done?

Mr. Ransom: Objected to as incompetent. This witness, whatever may be his qualifications, cannot amend the statute or add to it, or make
39635 as a basis of claim against this company a different system. We concede the right of the City to set up for their own information any system they see fit, but the only issue here is an issue raised as against this company, and as against this company they cannot set up a different method.

The Master: I will take the answer.

Mr. Ransom: Exception.

A. It does not make any difference cutting the candles in half.

Q. The statute provides that the gas shall have the intensity or power, illuminating power, of 22 can-
39636 dles. Did you ever see 22 candles used on one of these instruments or on any instruments for testing gas?

Mr. Ransom: Objected to as incompetent. The statute prescribes the number of candles.

The Master: Objection sustained.

Mr. Clark: Exception.

Q. Does the use of two candles in the apparatus which you have described give a more accurate standard for measurement of the intensity of the gas light or the illuminating power of the gas light than one candle would, in your opinion?

Mr. Ransom: Objected to as incompetent and immaterial. It depends altogether on the rate at which the candles burn. The testimony is that the two candles do not burn at equal rates. There may be variances, one may be burning faster and another slower, or both fast or both slow. There are variances, consequently producing variances in what the human eyesight perceives when it looks into the sight box.

The Master: I will overrule the objection.

Mr. Ransom: Exception.

A. May I have the question again? 39638

Q. Does the use of two candles in the apparatus which you have described give a more accurate standard for measurement of the intensity of the gas light or the illuminating power of the gas light than one candle would, in your opinion?

A. They do.

Q. Why?

Mr. Ransom: Objected to as incompetent.

The Master: I will take it.

Mr. Ransom: Exception.

A. Because the tendency of two candles, in using two candles, would be if one was burning irregular the other would tend to counterbalance that. 39639

The Master: Suppose they are both burning irregularly?

The Witness: Shall I include that in the question?

The Master: Yes.

The Witness: If both were burning irregular, then of course the error, whatever it may be and on whatever side it may be, would be intensified. Nevertheless, in using two candles the accuracy of the individual reading is enhanced for the reason that in using two candles on a sixty-inch

bar you are enabled to move the sight box over a greater area and thereby make a closer reading.

Q. You said there was a short length of pipe between the sulphureted hydrogen spigot or jet and the jet which is used for the testing of the gas. Is that short length of pipe purged before the tests are started?

A. That is purged on the photometer.

Q. Before the test is started?

A. Before the test is started.

3964] By the Master:

Q. You mean it should be?

A. Well, I will—

Q. You do not know what these men do when they get there?

A. I will say it should be, yes.

By Mr. Clark:

Q. Those are the orders of the department?

A. Yes, understood.

Mr. Ransom: I move to strike out "it is understood."

The Master: Yes, I will strike that out.

Mr. Clark: Exception.

3964] Mr. Ransom: Will you kindly look at this again (handing witness paper).

Mr. Chambers: We object to you striking it out. I want to ask him a question or two.

Mr. Ransom: Is Major Clark through?

Mr. Chambers: Well, you were interrupting if he was not.

Mr. Clark: Yes, Mr. Chambers.

Mr. Chambers: I will wait until he is through and then I will continue the re-direct.

Mr. Clark: I yield to the gentleman from Albany.

The Master: Go on, Mr. Chambers.

By Mr. Chambers:

Q. This sheet on which you have made computations for complainant's counsel that is the uncorrected candle power, is it not?

The Master: No, it is the corrected. Those are the results of the corrected.

A. Those sheets?

Q. I am speaking about these sheets. What is it you call them, now?

A. Test sheets.

The Master: It finally shows the corrected candle power. 39644

Mr. Chambers: Do not interrupt, now.

The Master: But your inquiry is wrong. It shows the corrected candle power.

Q. These sheets of the individual gas inspectors are the uncorrected sheets, are they not?

The Master: They are not. What is the use of asking a question like that when it is wrong?

Mr. Chambers: Let the witness answer the question.

The Master: I won't let the witness answer at all. It is a perfectly ridiculous question.

Mr. Chambers: They are the ones that are offered and sworn to are the corrected ones. 39645

The Master: These are, too; they show the corrected illuminating power.

Mr. Ransom: Does the Attorney General admit that the sworn ones do not conform to—

Mr. Chambers: I was asking if they are not the uncorrected sheets—sheets uncorrected.

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. The paper shows what it is.

Mr. Chambers: Exception.

The Master: It shows it takes the observed candle power, and it shows the various readings the inspector had and it shows his final calculations for corrected candle power.

Mr. Chambers: Exception.

By the Master:

Q. This figure down at the bottom for corrected candle power should be the same as the sworn report, should it not, Mr. Birdsley?

A. At our office we compare the test sheets with the sworn report.

39647 Q. To see that it is the same?

A. To see if it is the same.

Q. It must be the same to be right?

A. Yes.

The Master: Of course.

Mr. Ransom: Who makes that comparison?

The Witness: One of the inspectors who is usually stationed down there, whoever he may be.

The Master: That shows the corrected candle power.

By Mr. Clark:

Q. Someone beside the man who made the test?

39648 A. Someone besides the man who made the test.

Q. What are the instructions to the inspectors?

The Master: About what?

Mr. Chambers: In regard to checking their figures.

The Master: They are told that they must take care and check the figures over carefully before they are submitted to the main office.

The Master: Make that calculation Judge Ransom wanted you to. What sheet is that?

The Witness: This is June 3rd.

The Master: He wants you to look at it again. Look at it again.

(The witness makes computation.)

The Master: What is your question?

RE-CROSS EXAMINATION BY MR. RANSOM:

Q. Have you now re-computed that June 3rd Hirschewitz test?

A. I have.

Q. Do you get the same result as before?

A. I do not.

Q. What result do you now get?

A. I get 21.98.

Q. The figure 21.98 is believed by you to be correct? 39650

A. Yes, sir, it is.

Q. What was Mr. Hirschewitz's figure?

A. 21.77.

Q. And what was your previous figure?

A. 21.98.

Q. No, your previous figure.

The Master: 21.75.

A. 21.75.

Q. Mr. Birdsley, where does the inspector stand when he makes this test?

Mr. O'Brien: Your Honor, I am going to make another objection to the use of this picture. It is not accurate, it does not give the dimensions; 39651
it is not known to be an up-to-date machine and—

The Master: It is not in evidence.

Mr. Chambers: I object to his asking about it.

Mr. O'Brien: Then it is all the more in error.

The Master: There is not any inquiry as to the picture. The question is, where does the man stand.

Q. Where does he stand?

A. Well, in regard to what particular station?

Q. Does he stand in front of the meters?

The Master: In front or in the middle of the meters, or where?

Mr. Ransom: Or does he stand opposite the sight box?

A. When he is making a test?

Q. When he is making the test?

A. He stands in front of the sight box when he is making the test.

Q. And he moves the sight box until he thinks that the illumination produced by the candle and the illumination produced from the gas by the burner are

39653 of equal intensity, is that correct?

A. He moves the sight box one way or another until in his estimation the intensity of the two lights are equal.

Q. And then the thing which he puts down on the page is the calibration from the sight box?

A. Is a reading which he sees indicated under a pointer which is directly below the sight box and on the calibrated bar.

Q. So that if he does not move the sight box to the correct point he would get the wrong figure under the pointer?

Mr. O'Brien: Just a minute. I object to that

39654 as vague and confusing, and not understandable.

The Master: Overruled.

Q. Assuming that he did not move the sight box to the right place he would get the wrong figure under the pointer, would he not?

The Master: Well, wouldn't that depend on his judgment of the comparative intensity?

Mr. Ransom: Yes.

The Master: I think I have covered that by my questions.

Mr. Ransom: I will withdraw it, then.

39655

Q. On the machines which you have at 79th Street and at Grand Street, could you take an accurate and precise reading with the use of one candle with the sixty-inch bar?

A. With the sixty-inch bar I could not.

The Master: There is nothing in the statute says how big a bar you have got to have, is there?

Mr. Clark: The statute does not say one candle either; it says 22.

Q. Do you use the same flat flame burner at Grand Street as at 79th Street?

A. The same make?

39656

Q. Yes, and the same size?

A. The same size.

Q. You are familiar with the contracts between the City and the company for the supply of gas to the City?

A. I am not familiar with it word for word.

Q. Are these tests also the City tests under that contract?

A. I understand they are.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. Clark: The City contracts are not in point here.

39657

Mr. Chambers: They are not in evidence.

The Master: The witness has answered it; there is no necessity for my ruling. He says they are.

Mr. Chambers: I move to strike it out. Will your Honor rule on that motion to strike out?

The Master: The motion is denied. Anything else, Mr. Ransom?

Mr. Ransom: That is all.

RE-DIRECT EXAMINATION BY MR. CLARK:

Q. Mr. Birdsley, how do you account for the difference in the two calculations on that—

The Master: June 3rd.

Mr. Clark: June 3rd.

A. It was the first one I calculated, and I am sorry to say that I had forgotten to add up the column of observations. That column of observations has been added up incorrectly.

Mr. Ransom: On the test sheet?

The Witness: On the test sheet.

Mr. Ransom: And when I furnished you with a copy of the computation made by my representative you reached this correct figure?

39659 The Master: You saw the error and reached the correct figure?

The Witness: I did.

Mr. Ransom: That is all.

The Master: Anything else, Major? He has explained it.

Mr. Clark: Yes.

Q. Mr. Birdsley, has it been your experience that two candles burning together will more often tend to correct—

The Master: We have had enough of that.

Mr. Ransom: Objected to.

Q. (Continued.)—tend to correct each other's

39660 variations than to intensify them?

Mr. Ransom: Objected to.

The Master: Objection sustained. We have had enough of that.

Mr. Clark: Exception.

(Witness excused.)

The Master: Tables, Mr. Clark.

Mr. Clark: I find that Dr. Weber has not his table ready.

The Master: Didn't you tell me at one o'clock it was ready?

Mr. Clark: What?

39661

The Master: Didn't you tell me at one o'clock it was ready?

Mr. Clark: I saw him come in and I assumed it was. It is not ready.

The Master: Your table is the one Mr. Maltbie has?

Mr. Chambers: Yes. Now, there were several tables we were going to put in through Dr. Weber. I have seen him and talked to him, and they are not ready. He cannot get them in in time.

The Master: All right. Mr. O'Brien, have you any tables to offer?

39662 Mr. O'Brien: My tables are in the record, your Honor—that is, the old record.

The Master: What old record?

Mr. O'Brien: The old record in this case.

The Master: There is not any old record in this case.

Mr. O'Brien: In the original case.

The Master: Do you want to offer any?

Mr. O'Brien: They are the tables of Mr. Edgerton's testimony—all of the tables in his testimony in the old record.

The Master: You are going to offer his tables?

39663 Mr. O'Brien: When he goes on the stand he is going to testify to the same ones.

The Master: You are going to offer in evidence in this case the same tables that he testified to in the prior case?

Mr. O'Brien: Yes, the same tables.

HENRY V. MIDDLEWORTH recalled.

DIRECT-EXAMINATION CONTINUED BY MR. O'BRIEN:

Q. Have you now produced the records that you did not produce this morning?

The Master: That question is not allowed. What record do you want, Mr. O'Brien?

Mr. O'Brien: Let me have your typewritten statement (addressing witness).

Mr. Ransom: Objected to.

The Master: Let him have it.

39665 Mr. Chambers: That is, the record of the engine number that he was to go and get.

The Master: Let him have that list of records there.

(The witness hands counsel paper.)

Q. Have you more than one paper there in your pocket?

A. I have the subpoena.

The Master: Go on, Mr. O'Brien.

Q. Have you got the record of boostings?

A. I believe they were to come from the general office. They were not in my possession.

Q. That would relate to the electric vehicles, I assume, would it not?

39666

A. Yes, sir.

Q. And shows the quantity of electricity bought—

A. Outside.

Q. Bought outside?

A. Yes.

Q. Have you got many electric machines?

A. Yes.

Q. How many?

The Master: Not allowed. We have had all that.

Mr. Ransom: The boosting records are what you may call—

The Master: Boosting records.

Mr. Ransom: They are vouchers—

Mr. O'Brien: I do not want Judge Ransom to tell me what they are. I want the witness to tell me what they are.

The Master: Mr. O'Brien is quite right about it. Hand them to the witness and ask him.

Mr. O'Brien: Save that for the next rate case, that method.

The Master: Show them to the witness and 39668
ask him what he means, or whether they are something else.

Q. Are these the boosting records (handing witness)?

A. Yes, these are the boostings.

Q. They are not turned in as a formal report—you just send the vouchers right in for payment?

A. That is all.

Mr. O'Brien: I offer them in evidence.

The Master: What for?

Mr. O'Brien: What for?

The Master: Yes.

Mr. O'Brien: To show the payments that have 39669
been made on this account.

The Master: What will that prove?

Mr. O'Brien: Now, I am going to make my deductions after they get in.

The Master: Then I won't take it.

Mr. O'Brien: I am going to make my deductions. The first thing I find here is this "Allegheny Avenue and 19th Street, Philadelphia."

Q. What machine was that, and what was it doing in Philadelphia on company business?

Mr. Ransom: That does not necessarily follow that is one of our boosting records.

A. That is simply the address of the home office of the Exide Battery Company.

Q. Oh, you sent it to Philadelphia?

A. No.

Q. Where was the boosting done?

A. The boosting was done in New York City.

Q. At what place?

A. I think it states there, does it not?

Q. No.

39671 A. I could not tell what place.

Q. I want to know what place.

A. There are several boosting stations located at different points throughout the City.

Q. What steps have you taken to find out where that work was done or that service furnished to this company?

Mr. Ransom: I object to the question. The vouchers of the Exide Company are attached to these vouchers.

A. The vouchers are shown there.

The Master: Let me see one of them (taking paper from Mr. O'Brien). The objection will

39672 be overruled; I will take the witness's answer. Read the question.

(The question was read by the stenographer.)

A. There is the extra sheet there.

The Master: It is all here.

Mr. O'Brien: No, that is the report of Mr. Middleworth.

The Witness: It shows the steps that I took to ascertain where the boosting was done.

Q. Where is the bill produced by the Exide Battery Company?

A. They are there (indicating).

Mr. Ransom: Right annexed to the vouchers.

Q. These are bills made out by the Consolidated Gas Company.

A. No, they are not.

The Master: The record will note that among the papers produced by Mr. Middleworth is voucher 10,428, August 24, 1917, for 20 cents. Attached to this voucher is some correspondence, including a letter from the Exide Battery Company to the Consolidated Gas Company, which says, "were again returned," which indicates to the Master it had been returned before; and "in- 39674
voice for 20 cents and would state that we have received no order number and would advise that the current was delivered to your car at our West End Avenue station," which would indicate in some form the practice of the company with reference to the payment of these charges.

Q. Are these all the records on this subject for the period mentioned in the subpoena, or have you only brought some samples?

A. Those came from the general office; I have no copies of those records.

Q. Would you say from your knowledge of this item of expense for the period 1916, to August 31st, 39675
1919, that the 50 cent bill of 19 cent bill read by his Honor, covers the expense?

A. I could not.

By the Master:

Q. Is it a frequent occurrence or it is a rare occurrence?

A. Well, it is a rare occurrence, really. The only time we boost on the outside is when the car runs out of current and cannot get back to the garage.

Q. And that does not happen every day, does it?

A. No, very, very infrequently.

Q. Very rarely?

A. Very rarely.

Q. Would you say as many as just a few times a year?

A. A few times a year; yes, sir.

The Master: Next question. What else do you want?

By Mr. O'Brien:

Q. Have you produced the reports made—well, before I pass over that boosting expense, was there a formal report made in regard to the boosting ex-
39677 penses from time to time, or does it just consist in that statement attached to the voucher?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

The Master: The Master rules that we have had enough of the boosting.

Mr. O'Brien: Your Honor brought out in the numerous questions you asked the witness that there were detailed reports made, and I am asking the witness if this is what he means by the report.

The Master: I have made my ruling.

Mr. O'Brien: When he said to the Master
39678 there was a report made—I think you said monthly—as to the boosting expense.

The Master: I have made my ruling.

Mr. O'Brien: Exception.

Q. Have you produced reports of hours in use and are they daily, weekly and monthly?

The Master: Have you got hours in use reports?

The Witness: Yes, they were all here this morning.

The Master: Well, they were gone over this morning. I will not allow the question.

Mr. O'Brien: I want to ask the witness about them, your Honor.

The Master: Next question.

The Witness: They are here.

Q. You do not mean the chauffeur's register, do you?

A. No.

The Master: The others were all here this morning on the table.

The Witness: Yes, sir.

The Master: Next question.

Mr. O'Brien: May I not ask the witness as 39680
to those reports?

The Master: No, I understood you had covered everything you had here this morning and you said you wanted these other reports this afternoon. I will take those that were not here this morning.

Mr. O'Brien: That is confining my examination to a narrow limit.

The Master: I know it is.

Mr. O'Brien: You recall I asked you before the session closed, just as the witness was leaving the stand, as to putting in evidence some of the reports, and you said we could do that. 39681

The Master: Yes, we will do that when you get all through here.

Mr. O'Brien: I want to ask this witness as to those reports, the hourly reports—I mean hours in use.

The Master: He said they are here. Next question.

Q. And these reports show the hours in use of each machine?

A. Not individually. It shows the hours in use by a machine for a specific department.

39682 Henry V. Middleworth, Direct.

Q. It does not show the individual who used it?

A. No, sir.

Mr. O'Brien: I will bring them up before I close with the witness.

Q. The gasoline report, is that daily, weekly or monthly?

A. That is monthly. That is here.

Mr. Ransom: We had difficulty in finding many of these in the short time available. There are some of them (handing to Master).

Mr. O'Brien: I want all of them.

39683 The Master: July, September and November, 1919. Do you want to use these?

Mr. O'Brien: No, I will use July, your Honor.

Q. Where is August and the other months of this year, Mr. Middleworth?

A. I cannot say.

Q. These were produced not by you but from the main office?

A. Yes.

Mr. Ransom: There is another taxicab load of stuff coming up; there may be some of them in that.

Mr. O'Brien: Will we desist until they come?

39684 The Master: No.

Mr. O'Brien: Well, I will ask for all of the reports of the period 1916 to August 31st, 1919.

The Master: The complainant has produced all that they have been able to get in the short time allowed, according to the statement of Judge Ransom. Do you want to use these or any of them?

Mr. O'Brien: The only one I got here—

The Master: That you want to use, is July, 1919?

Mr. O'Brien: Yes.

The Master: Then use it.

Q. Mr. Middleworth, I hand you that paper and ask you if that is your handwriting (handing witness)?

A. Yes, sir.

Q. And it is your custom to make only monthly reports of gasolene used?

A. Yes, sir.

Q. You have nothing to do with the purchase of the gasoline?

A. Except that I requisition for it as I need it. 39686

Q. From day to day, or how often do you send your requisition in?

A. Once a week.

Q. And the gasolene is sent from the Standard Oil Company?

A. Yes.

Q. Of New Jersey—the Standard Oil of New Jersey?

A. I am not sure about the New Jersey part of it. I do not see the invoices.

Q. You never see them?

A. No, never—any invoices.

Q. You do not ever check them up? 39687

A. No, sir, they are checked up by the accounting department.

Q. And the gasolene is delivered to you right directly by the company?

A. Yes.

Q. By the Standard Oil Company?

A. Yes, sir.

Q. And you do not turn in any reports of the deliveries?

A. Yes.

Q. Where are they?

A. I haven't them; they are in the general office, I suppose, the receipted vouchers?

Mr. Ransom: They are here. They were here this morning.

The Master: Next question.

Q. Do you check them up?

A. I check up the receipts and send a receipted voucher to the accounting department.

Q. Of the quantities of gasolene delivered?

A. Of the quantities delivered, yes.

30689 Q. How often do you do that?

A. As soon or as often as it is delivered.

Q. When the bill is rendered what happens?

The Master: Objection sustained.

A. There is no bill rendered.

Q. No bills are rendered to you?

The Master: Objection sustained. Do not answer these questions, Mr. Middleworth, until I rule.

Mr. O'Brien: Exception.

Q. Then when the bill is rendered to the company at the main office, does the accounting department send it to you to check up?

30690 Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Ransom: It was covered by previous witnesses.

The Master: It was covered by this witness. He said he did not know when the bills came in at all—did not know anything about it.

Mr. Ransom: It was covered by previous witnesses, by the checking up of the receipted vouchers with the receipted bills.

The Master: It is covered by this witness. He said after the oil comes in he reports it.

Mr. O'Brien: I offer this in evidence.

The Master: For what purpose?

Mr. O'Brien: For the purpose of showing the method of transacting business, to be used with the witness's testimony.

The Master: What does it tend to prove?

Mr. O'Brien: Well, it proves many things.

The Master: I take it you have no objection to it? I hear none.

Mr. Ransom: I do object.

The Master: Objection sustained.

Mr. O'Brien: It proves many things. 39692

Mr. Ransom: I object to the offer.

Mr. O'Brien: The record will note counsel's objection to my bringing out what is in this paper, as evidence of no frank disclosure. "Gasolene used for running purposes, 36 cars, 3,199 1 2 gallons."

The Master: You are reading it into the record now, are you?

Mr. O'Brien: Your Honor, it is an argument. I will leave it off the record if your Honor wants it off.

The Master: You are reading it into the record, are you? 39693

Mr. O'Brien: No, I do not want to do anything your Honor does not want to allow. You are asking me a question—

The Master: Go ahead, make your statement. Read it into the record.

Mr. O'Brien: "Gasolene used for repairs (cleaning parts, etc.), 24 gallons; gasolene used for other purposes, 9 gallons; gasolene unaccounted for, 43 gallons. Total 3,275 1 2 gallons. H. V. Middleworth, Superintendent."

I will offer with that when they are received,

39694 Henry V. Middleworth, Direct.

all of the similar reports for the period that I have mentioned.

The Master: That will not be received. I have permitted you to spread on the record the contents of this one paper to illustrate how useless the receipt of them would be. Next question.

Mr. O'Brien: I note an exception to your Honor's ruling, which keeps out of the record in this case valuable underlying data.

The Master: It does not do anything of the sort. You have had access to all of this data as
39695 bearing upon any statement or claim of expenditure by this company, and have had it for months and months.

Mr. O'Brien: Well, I disagree with your Honor's statement of that.

The Master: Next question.

Mr. O'Brien: And refer to the record and the witnesses.

Mr. Chambers: Even if we had it it would not show what the vouchers show.

The Master: Next question.

Q. Have you produced the mileage report?

A. I believe that is here. That comes from the
39696 general office; I do not keep that in my office.

Mr. Ransom: We got all of these that we could. There seems to be 1918 and 1919, but I do not believe we have the other years here.

Mr. O'Brien: Will you produce the witness who made the search for cross-examination?

Mr. Ransom: A great many people made the search.

The Master: The papers produced are handed to Mr. O'Brien: Do you want to ask any questions about it?

Mr. O'Brien: There has been produced a report for the month of April, 1918, for June, 1918, for July, 1918, for August, 1918, for September, 1918, October, November. Have you got some there, your Honor?

The Master: January, May, June, July, August, September, October, November and December, 1919 (handing Mr. O'Brien).

Q. Who was H. V. M.?

A. H. V. Middleworth.

Q. That means dictated by you; that letter?

A. Yes, sir. 39698

Q. Do you make a daily report of mileage?

The Master: Objection sustained, the witness having repeatedly stated he makes a monthly report of mileage.

Mr. Chambers: Exception.

Mr. O'Brien: Exception. I ask now if you are going to produce during the afternoon the other reports?

The Master: Counsel need not answer; I am not going to waste any more time with them.

Mr. O'Brien: I offer these in evidence.

Mr. Ransom: Objected to.

The Master: They are not received. 39699

Mr. O'Brien: I offer these in evidence for such deductions as may be properly made, taking this testimony with the rest of the testimony in the case.

The Master: Objection sustained; I won't receive them. There is no apparent purpose for their offer.

Mr. O'Brien: These papers show many things, your Honor.

The Master: All right, you have had my ruling.

39700

Mr. O'Brien: Have you noted the number of miles for the cars and the car numbers?

The Master: Have you anything else of Mr. Middleworth?

Mr. O'Brien: I offer them and take an exception, if your Honor insists on keeping them out of this record.

The Master: Certainly.

Mr. O'Brien: All right, I note my exception.

Mr. Chambers: I will take an exception, too.

Mr. O'Brien: The report of work performed on affiliated companies' cars and individuals'.

39701 Mr. Ransom: That is one of the matters that was here this morning, and which was identified.

The Master: They are here, are they?

Mr. Ransom: They are here and were this morning.

Mr. O'Brien: I ask that they be produced.

The Master: No, they were here this morning and we will take it up later.

Mr. O'Brien: But, your Honor, I am going to ask this witness a whole lot of things about the work he did for affiliated companies' cars.

The Master: I want to know what you want here that was not here this morning.

39702 Mr. O'Brien: I take an exception if you are making a ruling now that I cannot ask him questions about affiliated cars, how he keeps the accounts, and what individuals have cars stored in this garage.

The Master: I am asking you to call for what was not here this morning.

Mr. O'Brien: The petty cash sheets.

Mr. Ransom: Yes, we produce those for the different years. They are all here for all the years, 1917, 1918 and 1919, with the exception, I think, of December, 1919, which is being used

by the defendants at the office and has not yet arrived.

Q. You have a petty cash account of your own for the purposes of the garage?

A. Yes.

Q. And the work done there?

A. Yes.

Q. And you make a monthly report, do you?

A. Yes.

Q. How is the arrangement made for cash on hand: do you carry a balance of your own in the bank, or is it in cash? 39704

A. Cash.

Q. Do you keep it on deposit in a bank or do you retain it?

A. We retain it.

Q. In your own possession?

A. Yes.

Q. The amounts would average how much a month?

Q. We have a stipulated amount allowed for petty cash disbursements.

Q. And what is that?

A. $1,000

Q. And you make disbursements as you see fit, during the term of the month, and then turn in your report at the end of the month? 39705

A. Yes.

Q. If you run over the thousand dollars you get additional money from the main office?

A. We might in rare instances.

Q. You do not make these payments by check?

A. No, all cash.

Q. They are all cash. And have you in each instance here produced the receipts for the money?

A. Yes.

39706 Henry V. Middleworth, Direct.

Q. Attached to your petty cash reports?

A. Yes, sir.

Q. And that covers a variety of sums, large and small, which are spent by you?

A. Yes, mostly small sums.

Q. And who is H. B. R.?

A. H. V. M., isn't it?

Q. No, H. B. R. Is that Reinach?

A. Yes, that is Reinach; yes, sir.

Q. Who is he?

A. He is the assistant general superintendent of
39707 the commercial department.

Mr. O'Brien: I offer these in evidence for the period from 1916, January 1st, to August 31, 1919.

The Master: It will be noted on the record that the offer of counsel includes what the Master judges by mere inspection of the document to be many thousands of petty cash vouchers.

Mr. O'Brien: I would not say that, your Honor.

The Master: I say it.

Mr. O'Brien: You can average that if you take one month.

39708 The Master: I say it on the record, that as near as I can judge from appearances it means thousands of petty cash vouchers. Not seeing any possible usefulness for this exhibit in the case, I will reject the offer and sustain the objection.

Mr. Chambers: Exception.

Mr. O'Brien: I think it goes without my saying it that the purpose for offering these papers is to show the way in which this business of the company has been conducted, the uses to which these moneys have been put, which are non-gas-making expenses in many instances, and the other

39709

deductions that may be made as well as the other facts that are shown by these papers, the loose and extravagant method of conducting business.

The Master: The Master likewise rules that as this is all underlying data to the general books of account and in support of ledger entries, counsel can at any time before the close of this case call attention to anything in any voucher in this or any other department, and have reference, particular reference to it, made upon the record, so that it will be before the Court of review as well as before myself.

39710

Mr. O'Brien: Then in effect you are ruling that they are in evidence, are you?

The Master: You heard what I said.

Mr. O'Brien: Well, you have said up to the time that the case is closed.

The Master: Go on. You can call my attention to and spread on the record any item, any voucher and any book offered in evidence or supporting any item in any book offered in evidence.

Mr. O'Brien: Your Honor, I am not going to have any—it may be clear in your mind, it is not clear in my mind, what position you are taking on these. I ask that these papers be received in evidence and be made part of this case. It is underlying data, and I want it so there can be no question, after you have made your findings or before, that these papers are in evidence, and that they indicate moneys that have been spent by this company.

39711

The Master: Anything else of this witness?

Mr. O'Brien: You have made a ruling that they will not be received in evidence. I except to your ruling.

The Master: I will not receive them in the manner offered or mark them as exhibits in this

39712

case. I have stated what I will permit you to do. If there is anything in any voucher which you believe shows a waste of moneys of this company, or an improper use of funds, I will let you call my attention to the particular voucher which you have in mind and spread it on the record. Next question.

Mr. Chambers: Well, that is what he was trying to do.

The Master: I have made my ruling now. Go ahead.

Mr. Chambers: Exception.

39713 The Master: Anything else you want, Mr O'Brien?

Mr. O'Brien: Do you mean to say that only such matters that are called to your attention that we see fit to emphasize in connection with these bills, are part of the record of appeal in this case?

The Master: That is what I say.

Mr. O'Brien: I take an exception to your Honor's ruling. I have offered them all in evidence.

The Master: I heard that, and there are many thousands of little papers you have offered that

39714 are not in.

Mr. O'Brien: That is all right so far as that goes. Now, repairs made on the road.

Mr. Ransom: I produce now all the reports that we are able to find in the time available. I have a large part of 1917, 1918 and 1919.

Mr. O'Brien: This case will be going on a long time. The time available, if it was not at your disposal today, the time will be—

The Master: Counsel for complainant produces the following under the call just made:

Monthly report of road repairs, August, 1919, March, 1919, October, 1918, September, 1918, August, 1918, July, 1918, May, 1918, March, 1918, February, 1918, January 19, 1918, December, 1917, November, 1917, October, 1917, September, 1917, a letter by Mr. Middleworth to Mr. Cullen Morris, in reply to inquiry, explaining some special items, October 16, 1917, a request for information apparently coming from the engineer of construction, Mr. W. C. M., under date of October 8, 1917, apparently the inquiry referred to in the letter of October 16, 1917; also August, 1917, July, 1917, June, 1917, and April, 1918. What do you want of these? 39715 39716

Mr. O'Brien: I ask counsel to produce the witness who made this search, or the custodian of these records for examination.

Mr. Ransom: I have had half a dozen men looking for these things since they were called for.

The Master: There won't be any witnesses on this.

Mr. O'Brien: I will make out a subpoena *duces tecum* for the months missing.

The Master: Do you want anything more, Mr. O'Brien? 39717

Mr. O'Brien: Yes.

Q. Now, Mr. Middleworth—

The Master: The stenographer will note the Master rules that the complainant need not produce the balance of these road repair reports, sufficient of them now being in court for any purpose that Mr. O'Brien may have.

Mr. O'Brien: I take an exception to your ruling.

39718 Henry V. Middleworth, Direct.

The Master: That will save you the trouble of issuing a subpoena. There is no use issuing a subpoena when I make this record for you and give you an exception.

Mr. O'Brien: Well, I take an exception.

Q. What is the *modus operandi* for this kind of expenditures—the chauffeurs turn in a bill when they come back after being on the road, for some expense that they may have incurred?

A. No.

Q. What is the method?

39719 A. That is simply a record of repairs made by the chauffeur to his car while he is out on the road, and indicates the delay, if any, to the passenger he is carrying.

Q. But you do not indicate here the passenger that was being carried, or the officer who was using the car at the time, do you?

A. No.

Q. And is it customary for the chauffeurs to turn in a written report when they come back?

A. They report it to me, if they have to make any repairs, and I include it in that report.

Q. And you keep your reports, do you, at your

39720 office?

A. I keep copies of those reports.

Q. No, but the reports that the chauffeur makes to you, do you keep them on file at your office?

A. Oh, yes.

Q. Or is it usually orally made?

A. No, they have a regular slip that they turn in each day showing that "I was obliged to make certain repairs to my car on the road, passenger delayed fifteen minutes, putting a tire on, put a skid chain on, or adjusted brakes," or anything of that sort. That

30721

was things to be done. And this report is simply a record of it.

The Master: I saw this one report there, that said, "No repairs made."

The Witness: Yes.

The Master: Is it possible that the reports that are not in this batch are those small slips, "No repairs made on the road."

The Witness: Oh, yes.

The Master: Do you have more than one of those a year?

30722

The Witness: Oh, quite frequently we find that there are no repairs made in one month.

The Master: Now, do you want anything more about these?

Mr. O'Brien: I am assuming that you are not going to take them and I take an exception to your ruling that they shall not be offered in evidence.

The Master: Well, then you are offering them, are you?

Mr. O'Brien: I am.

The Master: Mr. O'Brien offers the monthly report of road repairs for the months I have stated produced by complainant, and counsel for complainant objects, and the objection is sustained, no apparent useful purpose being served by the offer.

30723

Mr. O'Brien: The insurance reports.

Mr. Chambers: Exception.

Mr. Ransom: Complainants produce—

The Master: Three packages of insurance—monthly insurance reports for the years 1918 and 1919 and 1917. Which do you want?

Mr. Ransom: I want to say I have not had

time to sort out of those reports the reports which relate only to the garage.

The Master: It doesn't make any difference. Go ahead and offer them. These are all of the insurance reports.

Q. What part does Mrich play in this work of the garage?

Mr. Ransom: I object to that as incompetent, it appears what his relation to insurance is.

The Master: Objection sustained.

Mr. O'Brien: I want to find out whether—

39725 you heard Mrich testify, your Honor, as to where he spent his time.

The Master: Do you want anything of these papers just produced?

Mr. O'Brien: I am asking the witness if Mr. Mrich has any relations in his work to that department?

The Master: The witness won't answer.

Mr. O'Brien: Exception.

Q. Now, will you take those for the year 1919, first eight months, and give us the insurance reports?

The Master: Pick them out yourself, Mr. O'Brien. What do you want them for?

39726 Mr. O'Brien: I want to offer them in evidence.

The Master: They are offered then. They are right here all together.

Mr. O'Brien: I want to see what I am offering.

The Master: What difference does it make?

Mr. O'Brien: It may make some difference.

The Master: You won't be able to tell me any purpose for it anyhow, except that you may draw some deductions. Let me see one of them while you are looking at them.

Mr. Ransom: These cover all departments, and not merely the garage.

The Master: I know. I will get a garage one. Is the garage marked in some particular manner?

The Witness: Transportation.

The Master: Central garage?

The Witness: Yes.

The Master: Is that yours?

The Witness: Yes.

The Master: Central garage. All right. I have before me February, 1919, Central garage, not any changes. Now, Mr. O'Brien, what is it? 39728

Q. Who is Mr. Bridgeworth?

The Master: You need not answer.

Q. Who is Mr. Brady?

The Master: You need not answer.

Q. J. C. Brady?

The Master: You need not answer.

Q. Whose signature is that (indicating)?

The Master: You need not answer that. It will be noticed that the Bridgeworth signature, to illustrate my ruling, has reference to a report made by Mr. Bridgeworth as to insurances at 2552 First Avenue, it has nothing to do with the garage. 39729

Q. Are you authorized, or is your assistant, Mr. Goebel authorized to sell machines, or is that sale of such machines you disposed of controlled by some officer of the company?

A. The sale of anything in connection with this department is authorized by an officer of the company, and—

Q. (Interrupting.) So that in March 31, when you disposed of a Maxwell Runabout, No. 12,282,

motor number, the Olds emergency car, Motor No. 554, Cadillac limousine, Motor No. 47,741, and the two Maxwell converted 1-ton trucks, Motor Numbers 98,416 and 100,500, that was done with the authority of some officer of the company?

A. Yes.

Q. Mr. Addicks?

A. Yes.

Q. And do you make any report of, or where would we find the report that shows how much you received for them?

39731 A. The purchasing department.

Q. Why isn't it on this report of Mr. Goebel, the amount received?

Mr. Ransom: Why should it be? These are insurance reports from an insurance schedule.

The Master: I will let the witness state. Why don't you have a lot of things on these insurance reports that are not there?

The Witness: We have nothing to do with the sale of anything, the sale is conducted by the purchasing department on authorization of an officer of the company, and whatever is received for anything sold is received by them, we do not

39732 know anything about it.

Q. Oh, you do not make the bargain?

A. No, sir.

Mr. O'Brien: I offer these reports, up to August 31, 1919, insurance reports.

Mr. Ransom: Objected to.

The Master: Objection sustained, no useful purpose being shown.

Mr. O'Brien: Very useful, your Honor.

The Master: Objection sustained.

Mr. O'Brien: You have not seen what I have seen here, your Honor.

The Master: Yes, I have. I have seen that in most of these reports if these reports were received in evidence, it would show no changes, as to most of them.

Mr. O'Brien: It will show how the insurance was boosted in the month of March, 1919.

The Master: I have told you that if you had any point you wanted to develop by any particular paper, you should indicate.

Mr. O'Brien: Well, I have got to get the other papers.

The Master: Well, you have had ten months to 39734
do it. Go on.

Mr. O'Brien: Exception.

The Master: Next question.

Q. Now, is this the list which you produced from your office of the machines and the motor numbers (indicating)?

A. Yes.

Q. Is this a complete list?

A. Yes.

Q. Giving the motor numbers and the style of the machine, the registered number, and so on, and other particulars about each car?

39735

A. Yes.

Mr. O'Brien: I offer that in evidence, so far as the period is concerned down to August 31, 1919.

Mr. Ransom: I call the Master's attention to the fact that counsel is relying on the assumption that there is some particular merit in offers to August 31, that the proof in this case already has covered 10 months to October 31, 1919.

The Master: I will take this. Now, in copying this into the record, Mr. O'Brien, do you

want to show exactly as it is, with the original entries and the lines drawn through it, which I assume are cars which have been discarded, Mr. Middleworth?

The Witness: Yes, sir.

The Master: I think we better.

Mr. O'Brien: Take it just as it is, without any plea.

The Master: Spread it on the record, copying the items and lining them through as they appear on the table, and in the last column where
39737 they appear in red ink, let the record indicate that it is in red ink.

Mr. O'Brien: He will have to admit, of course, from August 31, 1919.

Mr. Ransom: I object to that.

Mr. O'Brien: I do not offer them.

The Master: No, Mr. O'Brien's offer, you will leave them out. Judge Ransom asks that they be added, and you will put them in.

Mr. Ransom: I ask that they be put in.

Q. Now, Mr. Middleworth, will you swear that the dates of the purchases thereon shown are the correct dates for the cars opposite each day?

39738 A. According to my previous record. There may be a typographical error, possibly, but I doubt it.

Mr. O'Brien: I make an objection as to Mr. Ransom's offer.

The Master: That is the way the record appears.

Mr. O'Brien: That is not the case, at the present time.

The Master: Well, I am taking it in. But I notice something, Mr. Middleworth, that Mr. O'Brien did not probably notice. I notice a car

said the cars ran, the
? What is that car?
Garford truck, a
to mention that

a jump from 113

that was the only
one of that sort of a
and we wanted to
hers.
a 304? 3974
also an Indian motor-
give, which has been
shown in the record gen-

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	Name of Car	
	Packard	No. 2
	Cadillac	" 2
	"	" 3
	"	" 4
	"	" 5
	Oldsmobile	E
	Maxwell	" 1
39743	Baker	" 1
	"	" 2
	"	" 3
	Cadillac	" 6
	"	" 7
	Ford	" 1
	Maxwell	" 4
	"	" 5
	Packard	" 3
	Maxwell	" 7
	"	" 10
	"	" 13
	"	" 14
	"	" 15
39744	"	" 16
	"	" 18
	Ford	" 4
	Cadillac	" 10
	"	" 11
	"	" 12
	Maxwell	" 19
	"	" 20
	"	" 21
	Cadillac	" 6
	Maxwell	" 36
	Maxwell	" 37
	Maxwell	" 38
	Hudson	" 1

AUTOMOBILE REGISTRATION RECORD FO

TION REC

No.	Date Purchased		Body Number	Motor Number	Motor Number
2	November 1909		2	10976	234015
4	July 1910		4	47713	233378
5	July 1910		5	47741	254010
6	December 1911		38274	61694	71152
7	January 1912		30572	65080	98416
12	July 1911		68346 (12)	63264	106506
13	May 1911		12282	12282	99623
14	August 1912		2213	120961	119787
15	September 1912		7834	989803	119235
16	November 1912		8131	212763	55F425
17	January 1913		52001	78453	6926
18	January 1913		52002	78683	178361
19	November 1913		290295	316606	191939
24	March 1915		23792	23990	205634
25	March 1915		23788	23801	K57-426
26	April 1915		541	78347	222657
28	April 1915		37543	38691	222348
31	April 1915		37546	38920	222440
34	April 1915		37630	38947	2M22
35	April 1915		37544	38944	7611235
36	April 1915		37553	37553	220322
37	April 1915		37629	33053	222125
39	October 1915		67777	60203	221367
40	October 1915		40	910917	3895
41	December 1915	1912	38081	63769	57PP346
42	December 1915		37741	63409	
43	December 1915		38114	63949	
44	July 1916		59550	70328	
45	July 1916		59447	70846	
46	January 1917	1916	143861	124903	
51	January 1912		51	66661	
47	August 1919		47	267237	
48	October 1919		48	275439	
49	February 1920		49	279843	
50	February 1920		50	80050	

)RD FOR 1919

Motor Number	Bore	Weight of Car	1918 Reg. No.	1919 Reg. No.	
10076			26881	23368	*21931*
47713	4 1/2	3500	811465	814485	
47741			26882		*Sold.*
51694			26883	110628	*21930*
55080			26884	110629	*21929*
63264			26885	110630	*21928*
12282			26886		*Sold.*
20961			26887	110625	*21927*
39803			26888	110626	*21926*
12763			26889	110627	*21925*
78453			26890	110624	*21924*
78683			26891	110631	*21923*
16606			26892	831234	
23990			26893	110632	*21922*
23801			135650	110633	*21921*
78347			26895	110634	*21920*
38691	3 5/8	2550	811464	814486	
38920	3 5/8	5100	843684	814487	
38947	3 5/8	2550	811462	814489	
38944	3 5/8	2550	811460	814488	
37553			26896	897415	*Sold.*
33953	3 5/8	2550	811461	814490	
50203			26897	110636	*21919*
10917	3 3/4	2425	811459		
63769			26898	110637	*21918*
63409			26899	110638	
63949			26900	110639	
70328			20841	110640	
70846			26901	110642	*21916*
24903			26902	110641	*21915*
56661	4 1/2	6320	811458	814492	
57237	3 5/8			218830	*21914*
75439	3 5/8			229901	*21913*
79843	3 5/8				*127365*
80050					

Name of Car		No.	Date Purchased		Bo Nu
Oldsmobile	4	54	April	1910	
"	5	55	April	1910	
Baker Truck	1	59	August	1911	0(
"	2	60	September	1912	111
G. V. Truck	1	61	October	1912	2
"	2	62	October	1912	2
"	3	63	October	1912	2
G. V. Wagon	1	64	November	1912	2
"	2	65	November	1912	2
"	3	66	November	1912	2
Lansden		67	November	1912	
G. M. C. Truck	1	68	June	1913	
"	2	69	June	1913	
"	3	70	June	1913	
"	4	71	June	1913	
"	5	72	June	1913	
"	6	73	June	1913	
"	7	74	June	1913	
"	8	75	June	1913	
"	9	76	June	1913	
Cadillac	8	77	July	1914	
"	9	78	July	1914	
G. V. Truck	4	79	July	1914	2
"	5	80	July	1914	2
"	6	81	July	1914	2
"	7	82	July	1914	2
"	8	83	July	1914	2
"	9	84	July	1914	2
"	10	85	July	1914	2
"	11	86	July	1914	2
"	12	87	July	1914	2
"	13	88	July	1914	2
"	14	89	July	1914	2

FOR 1919

Combined Weight of Car	Horse Power	1918 Reg. No.	1919 Reg. No.	
5650		811457	814493	
5650		811456	814494	
6950	3.5	811455	814495	
7150	3.5	811454	814496	
7000	3	811453	814497	
7000	3	811452	814498	
7000	3	811451	814499	30746
3575	2	811450	814500	
3575	2	842046	814501	
3575	2	839279	814502	
7810	3	811447	814503	
7650	3.5	811446	814504	
7650	3.5	811445	814505	
7650	3.5	811444	814506	
7650	3.5	811443	814507	
7650	3.5	811442	814508	
7650	3.5	811478	814509	
7650	3.5	811479	814510	
7650	3.5	811480	814511	
7650	3.5	811481	814512	30747
6400		811482	814513	
6400		811483	814514	
8400	3.25	811484	814515	
8400	3.25	811485	814516	
8400	3.25	811486	814517	
8400	3.25	811487	814518	
8400	3.25	811488	814539	
8400	3.25	811489	814519	
8400	3.25	811490	814520	
8400	3.25	811491	814521	
8400	3.25	811492	814522	
8400	3.25	811493	814523	
8400	3.25	811494	814524	

CORD FOR 1919

Motor Number	Bore	Weight of Car	1918 Reg. No.
10976			26881
47713	4 1 2	3500	811465
47741			26882
61694			26883
65080			26884
63264			26885
12282			26886
120961			26887
989803			26888
212763			26889
78453			26890
78683			26891
316606			26892
23990			26893
23801			135650
78347			26895
38691	3 5 8	2550	811464
38920	3 5 8	5100	843684
38947	3 5 8	2550	811462
38944	3 5 8	2550	811460
37553			26896
33953	3 5 8	2550	811461
60203			26897
10917	3 3 4	2425	811459
63769			26898
63409			26899
63949			26900
70328			20841
70846			26901
24903			26902
36661	4 1 2	6320	811458
37237	3 5 8		
75439	3 5 8		
79843	3 5 8		
80050			

39748

	Name
	G. V.
	"
	G. M.
	Maxwe
	"
	"
	"
39749	G. V.
	"
	Cadillac
	Detroit
	Maxwe
	"
	"
	Cadillac
	Maxwe
	"
	"
	Garfor
	Indian
	rear a
39750	Maxwe
	"
	"
	"
	Cadilla

AUTOMOBILE REGISTRATION REC

of Car		No.	Date Purchased		Body Number	Motor Number	
uck	15	90	July 1914		3878	234015	
	16	91	July 1914		3879	233378	
Truck	10	92	December 1915		909	254010	
	22	94	December 1916		101225	71152	
	23	95	January 1917		98957	98416	
	24	96	January 1917		101209	106506	
	25	97	January 1917		101424	99623	
uck	17	98	December 1916		98	119787	
	18	99	December 1916		99	119235	52
	10	100	February 1917		100	55F425	
Truck		101	February 1917	1912	101	6926	
	26	102	March 1917		154452	178361	
	27	103	July 1917		103	191939	
	28	104	November 1917		3818	205634	
	11	105	February 1918		105	K57-426	
	29	106	October 1918		9013	222657	
	30	107	October 1918		8939	222348	
	31	108	October 1918		9010	222440	
Truck		200	September 1916	1915	67051	2M22	
lotorcycle achment		300	April 1917		300	7611235	
	32	109	May 1919		8390	220322	53
	33	110	May 1919		8833	222125	
	34	111	May 1919		8591	221367	
	35	112	May 1919		9035	3895	
	12	113	December 1919		113	57PP346	

ATION RECORD FOR 1919

Motor Number	Bore	Combined Weight of Car	Horse Power	1918 Reg. No.	1919 Reg. No.	
234015		8400	3.25	811495	814525	
233378		8400	3.25	811496	814526	
254010		7650	3.5	811497	814527	
71152	3 5 8	5225		811466	814528	
98416	3 5 8	5225		811467		*Sold*
106500	3 5 8	5225		811468		*Sold*
99623	3 5 8	5225		811469	814529	
119787		4665	2	811470	814530	
119235		4665	2	811471	814531	
551425	3 1 2	6900		811472	61858	
6926		6058	3	811473	814533	
178361	3 5 8	5225		811474	814534	*Sold*
191930	3 5 8	4985		811475	814535	
205634	3 5 8	4975		811476	814536	
K57-426			31.2	833678	814537	
222657	3 5 8	4985	21	843387	831691	
222348	3 5 8	4985	21	843615	831235	
222440	3 5 8	4985	21	842276	831236	
2M22	4 1 2	15175		811477	814538	
				529	767	
7611235					843918	
220322	3 5 8	4985	21		843917	
222125	3 5 8	4985	21		843920	
221367	3 5 8	4985	21		843919	
3805	3 5 8	4985	21			
57PP346			31.2			

Q. Well, how are we to understand that hiatus of numbers? Do you give the other numbers, do you give the intervening numbers to the cars of the affiliated companies?

The Master: Already explained: I won't allow it.

Q. What numbers then did you give to the affiliated cars?

A. None.

Q. How do you designate them when they are going out and coming back?

A. By their own number, but they don't— 39752

Q. By the license number?

Mr. Ransom: Let the witness finish his answer.

A. By the number given them by the company which owns them.

Q. Well, you don't have numbers that conflict with those, do they?

A. They may conflict with ours. They do not apply to us. For instance, the New Amsterdam Company has a Car No. 5, and we also have a Car No. 5.

The Master: Has the Edison Company a Car No. 5 also?

The Witness: They may have. They are designated by companies and not by numbers. 39753

The Master: In other words, if Car 17 goes out, it is Edison Car No. 17, and Consolidated Car No. 17?

The Witness: Yes, if it is an Edison car it would show on the record, if it happened to have that particular number.

Q. Now, as to all the cars of the affiliated companies and trucks of any kind, the same method of keeping records is followed as to those of the complainant company, the Consolidated Gas Company?

30754 Henry V. Middleworth, Direct.

A. I could not say.

Q. Why can't you say? They are under your supervision, aren't they?

A. I do not quite understand the question.

Q. All of these cars are in one garage, as I understand it, and the work is done on repairs and cleaning and washing and supplies on all of those cars by you and the men under you?

A. Yes.

Q. And then you will take the expense, say, of repairs and labor and material, and you make a report
30755 on them separately from the report made of the Consolidated Company's cars?

A. Yes.

Q. And you turn all those reports in to the main office, and they allocate them there to the other companies, as they do to other expenses, as they see fit?

Mr. Ransom: Objected to, there is no such evidence that they do it as they see fit.

Mr. O'Brien: Well, the witness will tell us how. I am not going to mislead him or confuse him.

Q. Mr. Middleworth, just tell us what is done?

A. At the end of each month there is a monthly
30756 report sent to the general office, showing the labor and material used in the repairs of the affiliated companies' cars.

Q. Do you do the separating before the report goes in?

A. I do not understand what you mean by separating.

Q. Well, we speak in these trials of rate cases of allocating accounts, a long term for meaning that you separate an expense into certain columns for bookkeeping purposes?

A. Yes, sir.

Q. Now, is that all done in your office?

A. Yes.

Q. By your clerk or yourself?

A. Yes.

Q. And turned in in that way to the main office?

A. Yes.

Q. After that you do not see it any more?

A. No.

Q. There is no report back to you as to how they are allocated or anything of that kind in the main office, is there?

A. No. 39758

Mr. Ransom: Objected to.

Q. Now, you keep likewise a separate report of the labor account, do you, where, if Mr. A is working on cleaning cars, and he spends half a day on a New Amsterdam or a Mutual car, the Mutual Company's car or an Edison Company car, do you separate the time into such parts as will allocate the expense for each one of the companies?

A. Yes.

Q. Where is that done, on what kind of a report, and have you that report in court?

A. Yes, that shows on the individual time sheets that were here this morning. 39759

Mr. Ransom: And are still here.

Q. Will you point out the time sheet and—

Mr. Ransom: There are a few thousand of them over there (indicating).

Mr. O'Brien: Never mind about the thousands of them.

The Master: Well, we will have it on the record that there are thousands of them.

Mr. O'Brien: We want one. Don't be trying to keep the bars up, Judge Ransom. The story will be in here, if we can get it in.

39760 Henry V. Middleworth, Direct.

Q. Now, take one report for some date in the early part of 1919, and just show us the method of allocating the labor?

A. These seem to be 1918 time cards.

Q. Well, that will serve our purpose.

A. There is a charge against the Standard Gas Light Company's Automobile No. 1, eight hours.

Q. You are referring now to time card dated March 9, 1918, Consolidated Gas Company J. Thompson Carpenter, then you have in the first column car number, in the second column, account number, then you
39761 S. M. T. W. T. F. S., indicating the days of the week, and then the total hours in the next column, and then finally the amount at the end, which is—

A. The amount at the end is not put in by me.

Q. That is done at the main office?

A. That is done at the main office.

Q. Now, then, you have below Column No. 1, you have inserted the number of the car to indicate that that is a Consolidated Gas Company Car?

A. No, the account number.

Q. What does that indicate?

A. The account number.

Q. The account number would tell the story?

39762 A. Yes, showing it is a Standard Gas Light Company car.

Q. How does 1133 indicate to you that that is the Standard Gas Light Company?

A. Because that is the number assigned to the Standard Gas Light Company.

Q. And what are the numbers for the other companies?

A. I cannot recall them all.

Q. Well, are they other numbers like that?

A. Yes, they are odd numbers; yes, sir.

Q. Why is it up in the thousands?

A. So as to distinguish them particularly from the Consolidated property.

Q. Well, why do you take 1133?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Q. To indicate the Consolidated Gas Company?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Do you use the same number, 1133 all through these labor accounts, to indicate the Consolidated Gas Company?

Mr. Ransom: Objected to, as contrary to the 39764
testimony.

The Master: That is not Consolidated, that is Standard.

Q. Well, the Standard Company, Mr. Middleworth, do you?

A. All the numbers above 1000 are for affiliated companies.

By the Master:

Q. 2000, that is marked transportation department?

A. That is simply a transportation department figure, that is all, it does not indicate anything on the charge.

Q. Well, what is 2007? 39765

A. That is the number of the mechanic.

Q. Well, where does the account show on that?

A. The account number shows here, 76.

Q. Oh, I see. Well, what is 1105?

A. That is, I believe, New Amsterdam.

Q. 1105, you say, would be an affiliated company, and 1115 would be an affiliated company?

A. Yes.

Q. 1133?

A. Yes.

Q. 1103?

A. Yes.

Q. 1113?

A. Yes.

Q. 1130?

A. Yes.

Q. 1115 I see here?

A. Yes.

Q. All of those over 1000, the 1100's and so on are affiliated companies' accounts?

A. Yes, sir.

Q. 1135?

A. Yes, sir.

30767 By Mr. O'Brien:

Q. Well, you don't then, say this—I have been doing an injustice, perhaps, in assuming each company has a special number. You mean the accounts of each particular company have a special number?

A. Yes.

Q. And that will account for 1133?

A. Yes.

Q. And it would perhaps mean the page of the account, would it?

A. No, the number ascribed by the accounting department for that particular charge.

Q. Well, now, let me ask you. Have you got a list

30768 of just these accounts of the various companies affiliated with the Consolidated Gas Company, from which you take off your notations on the time slips for the accounts?

A. Yes.

Q. Where is that list?

A. It is in my office, overlooked.

The Master: No, it was not overlooked.

Mr. O'Brien: Just a minute.

The Master: It was not called for.

Mr. O'Brien: I object to that, your Honor.

The Master: No call for it, the witness misunderstood it.

Mr. O'Brien: Well, I call for it now.

The Master: Well, the call won't be answered.

Mr. O'Brien: I will call for it today. I ask that this list be produced.

The Master: I will not permit it.

Mr. O'Brien: I will show your Honor that you could not investigate that unless you had someone around you all the time that would answer all the questions that you put to them as to what this account meant. How could anybody check up these accounts?

Mr. Ransom: They have been checking up 39770
that account for months.

Mr. O'Brien: I disagree with you. We cannot cover that by argument, Judge Ransom, and I am not going to go into argument with you.

The Master: Therefore you are continuing it. Go ahead.

Q. Now, what is 1133 of the accounts, do you know?

The Master: Objection sustained, the witness has fully answered.

Q. I mean what is the character of the account, does it relate to this or that method or form of expense? 39771

Mr. Ransom: Objected to as incompetent.

The Master: Question not allowed, fully covered.

Mr. O'Brien: Exception.

Q. Who makes out these daily labor cards and allocates these several parts into these accounts, in this second column, called account number?

A. The clerk.

Q. Your clerk?

A. No, the foreman indicates the work done from the books that are produced here, and the account

number is ascribed or set against the company that it should be charged against.

Q. By whom?

A. By the clerk.

Q. Your clerk?

A. Yes.

The Master: I see my initials on some of these. A. S. G.

Mr. O'Brien: Well, that is Mr. Goebel.

Q. Is he still with you?

A. Yes.

39773 Q. He is still your assistant?

A. Yes.

Q. And in your absence he is acting superintendent?

A. Yes.

Q. Now, your clerk has this list before him that gives the numbers that run from 1 up to 200?

A. Yes.

Q. Do they go beyond 200?

A. I could not say for sure.

Q. And as reports come in from a foreman, or others in the garage department, he gives the account number?

39774 A. Yes, sir.

Q. And from that time on in the Gas Company's business, it is known by a number?

A. Yes.

Q. Goes up to the main office with a number?

A. Yes.

Q. The foreman's reports are not turned in to the main office?

A. No.

Q. They are kept by you in your department?

A. Yes.

Q. Have you got them in the office, or where are they kept down there?

A. They are here.

The Master: When they are at the office, where are they kept?

The Witness: They are kept by the foreman of the shop where the work is done.

Q. Well, how are they kept?

The Master: Not allowed. I think you have reached the limit on this.

Mr. O'Brien: This has been the most fruitful day we have spent in some time. 39776

The Master: I am glad you think so. I think it is the most useless day that we have spent, a pure fishing expedition that has not landed even a little bit of a fish.

Q. The amount is calculated by somebody in the main office?

The Master: The question is not allowed.

Mr. O'Brien: Exception. I offer this paper in evidence.

The Master: It won't be received. No useful purpose apparent. Let's have it.

Mr. O'Brien: I take an exception, and I ask that it be marked for identification. 39777

The Master: Declined.

Mr. O'Brien: Exception.

Mr. Ransom: Does the record show that this is one of the twenty thousand of the same kind?

The Master: The record can show that it is one of many thousands, I don't know how many there are.

Mr. Chambers: Does the Master expect we would look at all of these one by one, out of court, and tell you the ones that have something the matter with them?

Mr. Ransom: Many thousands of them have been looked at out of court by your men.

The Master: That is precisely why you have had access to the company's records.

Mr. O'Brien: Well, let us not have any argument about it, we had to bring them all here under subpoena.

Mr. Chambers: It could not be done.

The Master: Next question.

Mr. Chambers: We did not have the money or men enough to do it.

39779 The Master: Take no more statements, Mr. Briggs.

Mr. Chambers: Exception. You mean I cannot say anything more on that line?

The Master: That is what I mean.

Mr. Chambers: Exception.

By Mr. O'Brien:

Q. Mr. Middleworth, how many private cars are in the garage?

A. Two.

Q. How many private cars were there during 1918, if the number varied?

A. Not more than three.

39780 Q. And during 1919, the eight months, how many?

A. Two.

Q. And one is Miss Adams' and the other is whose?

A. Mr. Addicks'.

Q. Were they—

The Master: Is a charge made to Mr. Addicks for storage?

The Witness: Yes.

The Master: To Miss Adams?

The Witness: Oh, yes.

The Master: Who is Miss Adams?

The Witness: I believe she was secretary to

Mr. Sterling. She is now in the employ of Shearman & Sterling, I believe.

The Master: Was she charged?

The Witness: She is charged for storage.

The Master: And repairs?

The Witness: We made no repairs on the car.

The Master: On Mr. Addicks' car did you make any repairs?

The Witness: No. We have made repairs, but not very recently.

The Master: Well, when you did make repairs, 39782
did you charge him for it?

The Witness: He was charged for it, yes, sir, and he was charged 25 and 10 per cent upon the cost.

The Master: Did he know that?

Mr. O'Brien: You know, that is too good.

The Witness: He knows it, yes, sir; he paid it.

Q. Well, he belongs to the 10 per cent church, doesn't he?

The Master: Don't answer that.

Q. Did you charge the affiliated companies an extra ten per cent? 39783

A. I could not state. That is done in the accounting department.

Q. You don't know what they do in there as to these bills?

A. No, sir, not positively.

The Master: Well, how did you happen to know about Mr. Addicks, did he tell you?

The Witness: Well, Mr. Addicks insists upon it going upon every bill.

Q. He came there and told you about that, did he?

A. He told me that there should be 25 and 10 per

cent added to anything we did for him. That has always been his motto.

Q. He is very keen on that, is he?

The Master: You need not answer that.

Q. What kind of a car is his car?

The Master: You need not answer that.

Mr. O'Brien: We might for the purpose of discussion have it since you have gone into this.

The Master: No.

Mr. O'Brien: I did not ask the witness about the other car.

39785 The Master: I did not ask him what kind of car it was, and I won't let you ask.

Mr. O'Brien: I want to be fair to Mr. Addicks.

The Master: I don't care whether it is a Ford or Renault or Rolls-Royce.

Mr. Ransom: Used in the company's business.

Mr. O'Brien: You assume he is worth it, your Honor?

The Master: I think a man that supports a car when he can hire one so cheaply is a fool.

Q. Now, the hourly record of cars ready for use, was that the chauffeurs' register?

39786 A. That was here this morning.

Mr. Ransom: Still here.

The Master: Do you want that?

Mr. O'Brien: I think we had better put a sample in the record, your Honor.

The Master: No, I won't put anything on the record.

Mr. O'Brien: Well, you said we would be allowed to.

The Master: I have changed my mind.

Mr. O'Brien: I also want one of the 1917 records, that have been produced here in evi-

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dence, this is in addition to those offers that I have already made, I want the whole on the record to show that I have offered them all where I have offered them all, and now in addition to that I offer one of each report and foreman's report, and each one of these various classes of reports.

The Master: Each one of those referred to by Mr. Middleworth and that have been produced here today, either this morning or this afternoon. Any objection?

Mr. Ransom: I object, no useful purpose.

39788 The Master: Objection sustained, on the ground I can see no useful purpose.

Mr. O'Brien: Well, you should say we, because counsel's objection was—unless you want that in quotation marks.

The Master: I want to make it clear that although—

Mr. O'Brien: You agree with Ransom on that.

The Master: I wanted to make it clear that irrespective of Judge Ransom's objection, I am of opinion that, and it is my statement, that I can see no useful purpose.

39789 Mr. O'Brien: Well, the record will note the—

Mr. Chambers: That is the ground of Mr. Ransom's objection, too.

The Master: Yes, he happens to agree with me.

Mr. Chambers: Well, I don't know who plagiarized on the other, but you seem to be in accord.

Mr. O'Brien: The record will show counsel's objection to the Court on appeal having this data before them.

The Master: I don't think Mr. O'Brien wants anything more of you, Mr. Middleworth.

Q. The daily record of "going on in the shop."

The Master: Yes, that has been offered.

The Witness: That is here.

Mr. O'Brien: I will offer a sample of that in evidence.

The Master: I thought you had included all of those.

Mr. O'Brien: The daily record of cars in shop under repairs.

The Master: That has been offered and rejected.

30791 Mr. O'Brien: Now, the daily record, "the daily memorandum of any unusual occurrence in addition to the items reported elsewhere." Is that the name of a particular form of account?

The Master: Yes, they were here.

Mr. Ransom: That is a daily memorandum which was here this morning and they are still here.

Mr. O'Brien: I will ask counsel to produce them.

The Master: That has been offered and rejected. You offered them.

Mr. O'Brien: Well, I want them produced

30792 now, so I can quiz the witness about it.

The Master: No, I won't permit any questions about it, they were here and have been here all day.

Mr. Ransom: And yesterday.

The Master: And they answer no useful purpose, that I can see.

Mr. O'Brien: I won't stop to narrate the purposes for our offering these papers in evidence, and I take an exception to the Master's ruling.

The Master: If the papers that counsel is offering today were received in evidence, it would

39793

be necessary for the United States Supreme Court to take the House of Representatives' chamber to get the papers in there and look at them.

Mr. O'Brien: I object to that *reductio ad absurdum*.

Mr. Chambers: Don't you know the rule about that?

The Master: Yes.

Mr. O'Brien: These are taken care of.

Mr. Chambers: There is a rule about that that covers that.

39794

The Master: Well, this case is not going to be made ridiculous by any such record that can possibly serve no useful purpose that I can see and if the United States Supreme Court or the District Judges reviewing my report can possibly spell out any useful purpose, a new trial will have to be ordered.

Mr. O'Brien: I will spell out many useful purposes.

The Master: All right. You can go, Mr. Middleworth.

Q. Where the men in the repairs department do not fill in a whole day on some kind of work, is it charged up to the Consolidated?

39795

Mr. Ransom: I object to the question as vague and meaningless.

The Master: I do not think it is vague and meaningless. I will overrule the objection.

Mr. Ransom: Indefinite.

The Witness: A mechanic's time is charged against what he works at.

The Master: Mr. O'Brien's question is, suppose you had a man who did not do anything, who had not anything to do for several hours, for instance this afternoon.

The Witness: We never have that.

The Master: Next question.

The Witness: We never have any unused time.

Q. Well, there is always something there to keep the hands and minds going?

Mr. Ransom: Don't answer that question.

Q. How about general men, I suppose there are some whose time could not be cut up into twelve parts, they are charged up to the Consolidated Gas Company's account, are they?

39797 Mr. Ransom: Objected to, there is nothing to indicate that there are any general men.

The Master: Well, Mr. Goebel's, I suppose.

Mr. O'Brien: Yes, and your own.

The Master: Take the clerks and stenographer and yourself, and Mr. Goebel, how is that time charged?

The Witness: I could not say.

The Master: You don't know a thing about that?

The Witness: No, sir.

Q. Well, now, take the cleaners. Is your time, Mr. Goebel's time, your clerks' time and the time of the

39798 foreman and the time of any others there who are not taken care of in the allocations on the separate time slips, is that distributed in any way that you know of to the different companies?

Mr. Ransom: Objected to, incompetent, they called for the pay rolls, and the pay rolls are here.

The Master: The objection will not be sustained on the ground stated, but it will be sustained on the ground that counsel is just repeating a question which I just asked, and he answered.

39799

Q. Have you got a separate report in any shape or form, daily, weekly, monthly, or yearly, which would give us information concerning the use of the men under and the materials under you, or the machines, passenger or truck, under you, that were used for the war defense purposes?

Mr. Ransom: You mean the mayor's committee?

Mr. O'Brien: Any kind of committees or war defense.

The Master: You need not answer that, I won't take it.

39800

Mr. O'Brien: Well, I can't understand your ruling on that; you have already indicated that you are going to throw out a hundred thousand dollars in the 1918 expenses.

The Master: Yes.

Mr. O'Brien: And I want to find out whether there is a record kept, a separate record kept of any contributions in the shape of material or men or services from this department to work of that kind.

The Master: I am not going to take it. We have wasted too much time on this now.

39801

Mr. O'Brien: Well, I think that it is especially proper because of Judge Ransom's continual interpolating into the record today, something about the mayor's defense committee, home defense. Shouldn't we know how much is being spent, and how much of this garage time was used for such purposes?

The Master: I refuse to permit the question to be answered. Next question.

Mr. O'Brien: Exception.

The Master: This fishing expedition has gone far enough. All right, Mr. Middleworth, you may go. I won't allow any more questions.

39802

Mr. O'Brien: The Master has given—

The Master (interrupting): The witness is excused. I won't permit any more questions at this time.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

The Master: Next witness.

Mr. O'Brien: Before we go from that, I might ask Mr. Carter to take the stand a minute.

The Master: No. What do you want Mr. Carter for?

Mr. O'Brien: At this time I want Mr. Carter

39803 to state whether he has produced the papers called for by this subpoena *duces tecum* which I will ask leave to spread upon the record.

The Master: When was that served?

Mr. O'Brien: This was served on the 17th.

The Master: Call for what you want. Call for the papers.

Mr. O'Brien: Yes. Each and every written communication, notice or statement received through the United States mail or through any channel or medium from the Department of Water, Gas & Electricity of the City of New York or any of its bureaus or employes, in refer-

39804 ence to tests made by said department or any of its bureaus or employes of gas of the Consolidated Gas Company of New York from and during the year 1912 to February 18, 1920, and during the same period in reference to the quality of gas furnished by said company to any of its consumers; each and every communication of the form and manner above described received in the above manner or during the same period by each of the affiliated gas companies of said Consolidated Gas Company of New York. The subpoena bears the sworn statement of John T. Condon, the process server.

 30805

The Master: I take it the receipt of the subpoena is admitted?

Mr. Ransom: The receipt of the subpoena is admitted.

The Master: Have you produced the cards?

Mr. Ransom: We have produced a number of thousand cards received through the mails, addressed to Mr. William H. Bradley, Chief Engineer, Consolidated Gas Company, 130 East Fifteenth Street, New York, which contain on their face certain letters and figures which there is no need of further narrating. 30806

Mr. O'Brien: Mr. Carter, take the stand.

Robert A. Carter, recalled:

Direct-examination by Mr. O'Brien:

Q. Mr. Carter, have you produced all the data called for by the subpoena?

A. All that I know anything about.

Q. You have made a diligent search, or had made a diligent search in the records and files of the company for the papers mentioned in the subpoena, and this is all that you have been able to find? 30807

A. I directed that everything in the company's files that appeared to conform to the description in the subpoena be produced, and I assume that these are they.

Q. And you assigned that particular work of the search and the collating of this matter to Mr. Davidson?

A. No.

Q. Mr. Armstrong?

A. No.

Mr. Ransom: Objected to, immaterial.

The Master: Objection sustained. Now, Mr. O'Brien, do you claim that there are any notices other than these postal-card notices that have not been produced?

Mr. Ransom: If these are notices.

The Master: Well, whatever they are, other than these postal cards.

Mr. O'Brien: I do not know. I wanted to find out.

The Master: Do you claim that there are any
30809 others than these?

Mr. O'Brien: I do not know, at this time, whether there were some—

The Master: Do you want to offer what there is here?

Mr. O'Brien: I have not examined the list. I do not know whether they are all here or not.

The Master: I do not know, either. Let us assume they are all here. Do you want to offer any part of them, or all of them, assuming they are all here, do you want to offer them?

By Mr. O'Brien:

Q. Mr. Carter, were these secured from Mr. Brad-
30810 ley's office?

The Master: You need not answer that question.

Q. Mr. Bradley was chief engineer during the years 1912 to August 31, 1919?

Mr. Ransom: That has been covered fully.

The Master: These postal cards are apparently printed with the name of William H. Bradley, they apparently have been used for years in this form, I see some of them here in 1918, and under that appears "Chief Engineer, Consolidated Gas Company." Now, don't let us waste any time.

39811

Mr. O'Brien: I want to have the record clear.

The Master: You have a bundle here, 1918, and a bundle 1919, and you have another bundle here, 1917, and you have a bundle 1919, and here is some in 1918, 1917 and 1916.

Mr. O'Brien: All right.

The Master: 1916 and 1920. Do you want to do anything with these?

Mr. O'Brien: Yes, I offer all of those cards produced in response to this subpoena *duces tecum*, so far as the period 1912 to August 31, 1919, is concerned.

39812 Mr. Ransom: I object to them: they are a self-serving declaration, in no way binding on the complainant, no materiality to any issue in this case.

The Master: Objection sustained.

Mr. Ransom: Indefinite and meaningless on their face.

Mr. Chambers: Give us a chance, just a minute.

The Master: Objection sustained.

Mr. Chambers: Well, we offer them for the purpose of showing that they were notified in this way of the tests made by the City, and bringing home to them knowledge on the question of notice and knowledge of the company that they were not keeping up to their required candle power.

39813

The Master: What is next?

Mr. O'Brien: You have understood the purpose of the offer, of course, your Honor?

The Master: I understood before Mr. Chambers made his statement.

Mr. Chambers: It goes to the question of good faith, the very question the Master said something about yesterday.

39814

Q. Now, Mr. Carter—

Mr. Chambers (interrupting): Exception to the ruling. Will the Master state on what grounds he ruled them out?

The Master: No.

Mr. Chambers: Well, will you allow them to be marked for identification, or one of them?

The Master: No.

Mr. Chambers: Offer one of them in evidence, 1916.

The Master: No use offering one.

Mr. Chambers: You won't take it?

39815 The Master: No.

Mr. Chambers: You do not refuse because there were so many of them?

The Master: No.

Mr. Chambers: Well, I ask that you state on the record why you rule them out.

The Master: You have asked that before.

Mr. Chambers. So that the reviewing court may be apprised of the reason.

The Master: No.

Mr. O'Brien: Your Honor admits they went through the mails, they are stamped, postmarked.

Mr. Chambers: They got them, that is sufficient.

39816

The Master: I suppose it will appear on their face that they have been mailed, they have the postage stamp still on them.

Mr. Chambers: And they received them.

Mr. Ransom: Signed by nobody.

Mr. Chambers: I take an exception to the Master's refusal to spread on the record enough of them so that the reviewing authority may know what it was that we offered under the rule. Exception.

Q. Now, Mr. Carter, are you prepared to say that you produced all of the correspondence in the company's files in relation to this matter?

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. Did you look in the letter files, search for letters?

The Master: Not allowed.

Mr. O'Brien: Exception. I suppose for Mr. Carter, that I might as well close this little chapter right here, your Honor, if you are not going to allow it, it is folly for me to ask any more questions along that line, but I want to make a record that they have or have not made a search. There is letters that they received from the Department of Water, Gas & Electricity in connection with this matter, in addition to the customary cards that were sent from the several stations, and I want to have the witness state that, if the search is still going on, there may be other papers still to be produced, and I want to know it. 30818

The Master: Show me the copy of one letter that you say was sent.

Mr. O'Brien: I haven't it here. There was correspondence in 1914. 30819

The Master: Show me one letter.

Mr. O'Brien: I will have to produce the man from the Department of Water, Gas & Electricity.

The Master: Show me any in 1915?

Mr. O'Brien: I could not say as to that.

The Master: Was there any in 1916?

Mr. O'Brien: I could not say as to that.

The Master: As to 1917?

Mr. O'Brien: I could not say at this time.

The Master: In 1918?

Mr. O'Brien: I could not say at this time.

The Master: In 1919?

Mr. O'Brien: I could not say at this time.

The Master: In 1920?

Mr. O'Brien: We are not interested in 1920, and 1919 from August 31 to January 31st.

Mr. Chambers: Would you hear argument on the admissibility of these cards?

The Master: I will not.

Mr. Chambers: Exception.

Mr. O'Brien: I will now ask that the subpoena be spread upon the record.

30821 The Master: No, I won't take it.

Mr. O'Brien: Exception.

Mr. Chambers: I offer it in evidence.

Mr. O'Brien: I offer the subpoena in evidence, served on Mr. Carter, which was sworn to by John T. Condon, sworn to before W. H. Lake, Notary Public, on Feby. 18, 1920. I offer that in evidence and take an exception to your Honor's ruling.

WILLARD F. HINE recalled:

30822 CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Hine, in your schedule or your Table 250, Exhibit AA-414, you state what you call the adjusted book costs, 14th Street station, January 1, 1906?

A. Yes.

Q. Have you not excluded from that computation all of the gas manufacturing plant and equipment at 14th Street station?

A. I have attempted to.

The Master: Well, you adjust the book cost then by throwing out property, is that it?

The Witness: Everything except the East 15th Street holder and tank valve house.

Q. You had no personal knowledge as to this 14th Street manufacturing station, or its use prior to 1906?

A. No.

Q. And have you included in Table 256 all of the property and all of the expenditures for property anywhere forming part of the valve house at the 14th Street station?

A. Up to January 1, 1906, yes, as shown by the company's books.

Q. I ask you whether you are able to say whether 30824
you have included in Table 256 the following expenditures made by the Consolidated Gas Company upon the valve house and contents at the 14th Street station, 1888 exhauster house and connections, $20,182.43; exhauster and connections, $10,537.38; 1889, exhauster and connections, $1,094.37; exhauster and valve house, $5,960.01, making a total of $37,774.19.

Mr. Chambers: I object to that on the ground that I do not think he could follow as great an array of figures as that.

The Witness: I could not get them all.

Mr. Chambers: He could not get them, you are reading them through so fast I could not get any 30825
of them.

A. With respect to the item of $20,182.43, and the item, $10,537.38 charged in 1888, against the 14th Street station, those are not included.

Q. How about the other item, 1889?

A. In 1889, I only include the charge of $1,159.87, which was charged against the East 15th Street holder, the other items being charged against the 14th Street station.

Q. But don't you purport to show here, or don't you think you should have purported to show in this Table

256, all of the expenditures in connection with this valve house and exhausters?

A. Well, it was impossible to make a detailed analysis of these accounts and from the designations given in those accounts it would be impossible to accurately locate all of those things. I have only taken them as charged against the East 15th Street holder and as charged against the East 15th Street valve house and contents which was started in 1905.

Q. Did you not find, and did you not find both from the record and from the testimony in this case, that in
30827 '78 and 1880, expenditures on this valve house were charged against this 14th Street station?

A. No, I did not ascertain as to what those expenditures were for.

Q. That is, where expenditures prior to 1906 were made on this valve house in connection with the 14th Street station, charged to the 14th Street station, if they did not directly pertain to the tank and holder itself, you let them out in this Table 256?

A. I have only listed under here the charges against the East 15th Street holder, prior to 1906, with the exception of the charges which were first shown in 1905, under a separate subdivision for East 15th
30828 Street valve house and contents.

Q. Well your table then, Table 256, insofar as it relates to the valve house and contents, as you call it, is not complete?

A. I do not know that that is so. If the expenditure for that valve house were included under the heading of the East 15th Street holder, it would be complete. If they were charged against the East 14th Street station which is shown under that account, I have not got that.

The Master: Then it would not be complete?

The Witness: It would not be complete.

Q. Well, now, in your table—

A. With the exception insofar as those might be made up for that incidental item, the $10,000.

Q. In your Table 253, Exhibit AA-411, which is called an analysis of debits to plant account, 1884 to 1906, you show these expenditures for 1888 and 1889, on this valve house as a part of the 14th Street station?

A. I show in there the charges that were tabulated, or that were made against the 14th Street station as differentiated from the East 15th Street holder in 1888, which amounted to $107,542.33. 39830

Q. That is in the item of $107,542.33 for the year 1888, and $8,424.38 for the year 1889, you show these expenditures on the valve house and connections under your 14th Street heading?

A. No. I told you what I had done.

Q. On Table 253?

A. On Table 253 I have included under the 14th Street column, the first column after the year, all of the charges made against these—put under a heading East 14th Street. I have not analyzed those charges in detail, I do not know what they are.

Q. Well, then, insofar as this heading on Table 253 is called an analysis of debits, it is incorrect? 39831

A. No, sir.

Q. You have not made an analysis to find out what they are?

A. I said I have not made a detailed analysis of what these items represent, except as they are analyzed—as they were subdivided by the company and as to these charges at the various stations.

Q. Well, can you tell me whether or not in those items which you give on Exhibit 411, Table 253 for the 14th Street plant, you have included these expenditures in 1888 and 1889 on this valve house, exhauster and connections?

A. I do not know what those boilers cover, that $107,542.33.

The Master: You can't say whether it includes those items or not?

The Witness: No. I can say that it includes those matters that he read off, but—

The Master: That is just what he is trying to get you to say.

The Witness: I do not know whether it includes the valve house. I have not analyzed—

The Master: But it includes this amount?

30833 The Witness: It does include those two amounts.

The Master: On 253?

The Witness: Yes, on 14th Street.

The Master: And if they include the valve house, you did not put them on 256?

The Witness: Yes.

Q. And yet, when you come to Table 256 and make up what you call an adjusted cost, 14th Street valve house and contents, tank and holder, leaving out the manufacturing plant and equipment you also leave out this $38,000 of expenditure on the valve house, exhauster house and connections?

30834 A. I do not know that I did that. I left out those amounts. Those amounts were not included.

By the Master:

Q. The record shows that those amounts are, for the purposes indicated by counsel, you have omitted?

A. I have omitted.

Q. Why?

A. Because of the fact that I did not know that they were for that valve house.

Q. Why didn't you find it out?

A. Because as I say, it was impossible to make an analysis of those accounts in full as to what each thing represented.

Q. Why?

A. Because the designations against the charges were not complete enough to make a separation.

By Mr. Ransom:

Q. But you did find in 1905 those items which you have described as expenditures for extensions to this valve house and contents and you have included them in Table 253, the item of $22,000 plus of charges in 1905?

A. I do not remember the exact heading that was on those, but there were charges separately set forth on account of that East 15th Street valve house and 39836
contents in 1905 and 1906.

Q. Didn't you just a few minutes ago characterize those as extensions?

A. I do not think that I did.

Q. Well, isn't that a correct characterization, that they are for extensions?

A. I don't know.

Q. Didn't you find out that they were extensions?

A. No, I did not know it.

Q. And if you called them extensions a few minutes ago, you did it without knowing?

A. I did.

Q. Did you read the testimony of Mr. Alrich, about 39837
the extensions of this exhauster house and connections in 1905 and 1906?

A. I read Mr. Alrich's testimony.

Q. Well.

A. I do not remember the details of it.

Q. Well, if there were these $22,000 of expenditures in 1905 for extensions, didn't your knowledge and experience lead you to believe that they must have been extensions of something previously built and something previously for which money had been expended?

30838 Willard F. Hine, Cross.

A. Well, from the designations, the incomplete designations that occurred in the company's books covering these expenditures, I do not believe anybody could tell just what these covered.

Q. Now, this Table 256, you have an item of 2 per cent from incidentals, $10,034.05?

A. Yes, sir.

Q. Does this appear as an entry in any account of the company?

A. It does not.

Q. What did you intend to include in the allow-

30839 ance of two per cent for incidentals?

A. Because from those charges at that time, it appeared to me that there were possible omissions, and I thought that that would cover such possible omissions of things that might have been there.

Q. What kind of omissions do you mean?

A. Piping, and so forth, around there.

Q. That you did not run down on the books?

A. That I did not find listed separately on the books, yes.

Q. And so you made an estimate?

A. I did.

Q. And added to the—what you call the adjusted

30840 book cost?

A. I added ten per cent to the $501,000.

Q. Ten per cent?

A. Two per cent, I beg your pardon.

Q. Why didn't you add two per cent to the 1905 charges?

A. Well, because there they were set forth more distinctly until they got down into the later years.

Q. You made no difference of two per cent for incidentals in your revision of the book cost of other stations at 18th Street, 21st Street, 61st Street, 111th Street and 44th Street, did you?

A. I have not.

Q. Now, doesn't your reference on Table 257, adjusted book cost 18th Street station, January 1, 1906, Defendants' Exhibit AA-415, the reference which you make to page 9778 of the testimony as to the lack of improvements Block 715, Lot 51, that relates to the testimony given by Deputy Tax Commissioner Naumann as to what property he assessed for tax purposes?

A. Yes.

Q. You have no personal knowledge as to what improvements there were on that property in 1906? 39842

A. No.

Q. You know what the testimony of Mr. Ulrich was, as it appears in the record of this trial in respect of the improvements which were on that property at that time?

The Master: What is this 257 anyhow?

Mr. Ransom: Heaven knows.

The Master: Well, I want to know now. What is this, Mr. Hine? Lot 17, the first item, Block 689, says value, see page 9766 of the testimony. What does that mean?

The Witness: That is the assessed value of the improvements as testified to by the Deputy Tax Appraiser. 39843

By the Master:

Q. What has that got to do with book cost?

A. Well, in this particular 18th Street station, a part of that block has been condemned by the City and there was no change made on the books with respect to the credit until many years later, and there was no way of making a separation of it, it could only be an approximation.

Q. Well, how does that show it?

A. I could not get the book cost on that particular block at all.

Q. What does $50,000 represent, the assessed value of what was left?

A. On the improvements on the lot, yes.

Q. That was left?

A. That was left.

Q. You take that for book cost, then?

A. I have put that in here, yes, in arriving at this figure.

Q. As the book cost?

A. Rather it is not the book cost, of course.

Q. What is Lot 12, Block 680, $132,000, what is

30843 that?

A. Well, those are the improvements which were on that block, according to the testimony taken from Senate Document 47, page 815.

Mr. Ransom: The Yabden report?

The Witness: As the book cost. No, not the Yabden report, but the so-called Rowland appraisal.

Q. But that is not the figure that appears in the books?

A. Oh, yes, that is what the books are founded on, are the figures that occur in this Senate Document 47, that is the way the original book entry was made

30845 up.

Q. This $132,100 in the book?

A. Not in that way, but when they made the opening entry in 1884, the gas holders Nos. 3 and 4 were put down at $52,000.

Q. I am not talking of gas holders 3 and 4?

A. Well, they are on that block.

Q. I am talking about Block 680, Lot 12, the item $132,015. What is it?

A. That is made up of the items down below here.

Mr. Chambers: He was just trying to tell you.

Q. Oh, you have got your total before you give the items, is that the idea?

A. That is the idea. Those items foot up to that amount.

Q. And the $132,915 appear in the book?

A. Not as a separate figure that way.

Q. No, but these various figures that make that up appear in the books?

A. Yes.

Q. The same is true as to $114,395?

A. Yes.

Q. The items 52, 61, 411 are in the books?

A. Yes, those items would be in the books.

Q. And this block which Judge Ransom has just 39848
asked you about, Block 689, Lot 17, you say unimproved because you say Mr. Naumann says he did not assess it for any improvement?

A. Yes.

Q. And therefore you adjust the book cost there?

A. Well, there was a particular reason, I think the testimony shows that lot unimproved, the testimony of Mr. Alrich, page 5687 shows that they had miscellaneous structures erected thereon in 1906 and 1907. It was only claimed, as I understand it, from December 31, 1906, to January 1st, 1914.

Q. Now, this Lot 14, Block 716, Defendants' Exhibit AA-241, Table 67, what does that figure repre- 39849
sent?

A. That represents the—

The Master: I take it that at the close of the case you have some motions to strike out some exhibits?

Mr. Ransom: I think I will move this one right now.

The Master: I think you had better reserve all these motions at least until the close of the case, as part of the summing up, and as part of my decision. I am inclined to think I will strike out some of them.

The Witness: This $11,890.17—

Mr. Chambers: How about a motion by us to strike out?

The Master: Why, certainly.

The Witness: Is the credit shown by Table 67 in Exhibit AA-241, which was made when the property was sold or condemned, whatever happened there.

Q. That is the credit?

A. That is the credit they made for the plant, that is, as representing the book cost of that plant.

30851 By Mr. Ransom:

Q. And the credit is made for a withdrawal, and the debit for an addition?

A. Yes, and when they made the credit that should have represented the book cost of the plant, and I used that as the book cost of the plant, on the assumption that the credit was correct.

Q. That is the most fantastic way of whittling away a company's investment that I ever heard of, it beats Dr. Weber to a standstill.

A. I did not; I added it on, that—

The Master: In 1918, $11,890.17, and you wrote it off as of January 1st, as of that figure?

30852 The Witness: Yes, at that time, 1906, automobiles in there.

The Master: All right, I understand it now. Go ahead.

Q. Now, on this Lot 12, Block 690, do you say those items that you have set forth there totaling $132,915, represent all the book costs of property located on that block and lot?

A. All that I could find, according to the testimony.

Q. According to the books, the testimony of book costs?

A. The books absolutely do not show the book cost of this property in 1906, because the books show the cost of the property which had been taken away by the City, and it was not there, and the books had not been credited at that time for this property that the City had taken, and you could not get it directly from the books.

Q. Take up Block 690, Lot 12?

A. In this whole 18th Street proposition, the property had been condemned—

Q. Prior to 1884?

A. No, prior to 1900; this is January 1, 1906. 39854

Q. But you said this $132,915 was for the items that you found, and the opening items were in 1884?

A. Yes, sir, that is from the testimony in the case, those were the items that were there in 1906, and in arriving at the book value of those items I went back to the 1884 figure that was put on the books. By Mr. Ransom:

Q. Did I understand that you took your calculations of the book cost of property at these various stations and plants from testimony in the case and not from the books themselves, as to what property was in a given station, and how much had been spent for it? 39855

A. The book cost, in certain cases it was absolutely necessary because in those cases the books do not show what was there.

Q. Well, did you as an engineer—

A. The testimony shows the books did not show.

Q. And you as an engineer did not find it in the books?

A. Well, I know that it could not show just what was left. There had been no credit made, the books showed the total expenditures, or the starting figure plus the total expenditures, less the credits up to that

time on account of that station, but there had been no credit made on account of the condemnation by the City.

Q. Well, the basis of your Table 266—

The Master: Are you going back?

Mr. Ransom: Exhibit AA-421, in which you—

The Master: I haven't got 266 here. They go 263 and then 261.

Q. In which you make what you call adjusted book retirements of plant?

30857 A. Yes, sir.

Q. Did you not rely, as you indicated here by footnote B on that table, upon the testimony of the witness Mrich, page 7890 of the printed record in this case as to what improvements there were on Lot 51, Block 715, in making your adjustments of the retirements shown by the books for the 18th Street station?

Mr. Chambers: I object to that on the ground that the footnote B stated exactly how it was done, and how he used the testimony of the witness Mrich.

The Master: Objection overruled.

30858 Mr. Chambers: Exception.

A. I relied on that for the dates when this property went out of use.

Q. Well, didn't you rely on it as to what property there was there?

A. Yes, to a very great extent.

Q. Well, completely?

A. Well, not completely, no.

Q. What property do you recall Mrich testified to as being there?

A. He testified to part of a purifier house, I believe on one of those blocks, part of a plant on another block

where it had been condemned. Of course, there it was impossible to make any separation.

Q. You mean Lot 51, Block 715, that is what you say Alrich testified was there?

A. I do not remember what block that was, but one of the blocks in that 18th Street plant.

Q. You haven't any knowledge as to what property was there, what improvements?

A. No.

Q. You assumed the correctness of what Alrich testified to?

A. Yes. 30860

Q. On page 7890 of the printed record Mr. Alrich said upon the rear of the lot was a two-story brick building extending the whole width of the lot, and toward the street there were two one-story frame buildings. What did you assume was there?

A. What block was that?

Q. Block 715, Lot 51, what did you assume was there in 1906?

A. I assumed that unimproved, and that in 1906, as I remember the testimony, that was not claimed as used and useful for gas purposes, and I do not remember the testimony stating that there was anything there in 1906. I do remember that Mr. Alrich testified that 30861 they had structures erected on it in 1906 and 1907.

Q. Well, now, in making your adjustment of the book cost of the 18th Street station on your Table 257, did you include as a part of the cost of the property on Block 680, Lot 12, the expenditures made by the company as shown by your Table 253 of $13,784.63, during 1888, made up of $4,124.52 for exhauster and valve house, $9,642.11 for exhauster and connections, and of $622.22 during 1889, made up of $539.41 for exhauster and valve house and $82.81 for exhauster and connections?

A. I included only the items shown on Table 257, which do not include anything for the valve house and the boiler house except the amounts as taken from Senate Document 47.

Q. That is, you left out of your adjustment of the book cost of the 18th Street station the expenditures for this station which you yourself had shown in your own Table 256?

Mr. Chambers: I object, that is not the fact.

A. I did not analyze those expenditures in detail, and only included for the 18th Street station these
3980-3 items as shown.

Q. Are you in any way prepared to say that the books do not show that those expenditures were made in 1888 and 1889 for that purpose, as shown by your own Table 253?

A. My table does not show it, certainly.

Q. Doesn't it include that, your Table 253?

A. It includes all the debits, all the charges, that were made during that period, for the 18th Street station.

Q. And you did not examine the books?

A. I do not believe that the books—yes, I have examined the books, but I did not do all that work in
3981-4 detail. I do not believe, though, that the books would show that it was for that valve house or boiler house. They do not show that detail. There are several valve houses there.

Q. Have you looked over at all the Schedule B, Consolidated Gas Company of New York, detail statement of the cost of the company's manufacturing plant and holder stations to and including December 31, 1918, from 1884, down to that time, which was furnished to the defendants some time ago?

A. I have.

Q. Didn't you find those items also shown there in connection with that property?

A. What items?

Q. The items that I have just referred to.

A. I do not remember seeing any such items as that.

The Master: Is that schedule in evidence?

Mr. Ransom: No.

The Master: How came it to be furnished to the defendants?

Mr. Ransom: Because we put in our case on what we regarded as a sound theory of the elements of property and value on which we are entitled to figure a return. When the defendants presented their theory, namely, a contention that 39866
the return should be based on the book cost of the property, and purported to give various tables to show what they regard as such book cost of investment, then this company about a month ago made up tabulations of its book cost designed to meet the defendants' contention in that respect, and in order to save time these were furnished to the defendants at that time.

The Master: Oh, you expect to offer them in rebuttal?

Mr. Ransom: We expect to offer them in rebuttal.

Q. You say you did not find them in this schedule 39867
when you checked up with this schedule. I show you the plaintiff's account of the—

A. (Interrupting) I do not believe I said that. I said I did not remember those items.

Q. Well, did you look to see?

A. I do not remember them this way, no.

Q. You don't say they are not there?

A. Oh, no, sir, I do not; I cannot say in detail what is in there.

Q. And you did not check up then on the items you had omitted according to this schedule?

A. I checked over with that schedule to a certain extent, or looked over the schedule. I did not have time to check against it. And I could not find that it would be much use, for the reason that a good many of the credits were not made when the property was retired, but were made at a much later date, many years later.

Q. But those relating to debits, and they relate to expenditures made in 1888 and 1889, shown on the books?

A. But I do not know that they relate to the valve
39869 house on that particular lot. Maybe they were the valve house for the new holder that was also condemned over there.

Q. You did not make an analysis to find out?

A. I could not make a detailed analysis to find out.

Q. Now, on this Table 257, in which you undertake to make an adjustment of what you call the book cost of the 18th Street station, did you include in the cost of the property on Block 690, Lot 12, the expenditures made in 1893 for the engine exhauster house, $2,490.52, and in 1895 for boiler and fittings $3,269.73?

39870 A. I took, as stated before, in connection with this entire 18th Street property, I have included only those items taken as shown from the sources shown, and have included no debits or credits during the period 1884 to 1906, because of the fact that it was impossible to state from the books what was there and what was not there.

Q. It is impossible for you, without looking at them?

A. It was impossible for anybody to tell. The books do not show what property had been removed.

Q. Well, they did show what had been expended?

A. Yes.

Q. Well, are those items of expenditure in your table?

A. I told you I had included no items of expenditure from 1884 to 1906.

Q. That is true of everything that was expended there during that time?

A. At 18th Street?

Q. Yes.

A. Yes.

Q. Now, with respect to Table 261, by which you have attempted to work out what you call Adjusted Book Cost of the 111th Street station, as of 1906— 39872

Mr. Chambers: That is not Table 261.

Q. 65th Street station, rather, Table 261, at the bottom of Table 260?

A. It is numbered, another table number.

Q. Exhibit AA-417, will you show where, as you make the statement that the Rowland Appraisal shows that in 1884 the 65th Street station comprised six small holders, valve house, boiler house and so forth. I show you the Rowland Appraisal contained in a prior record, I have the other copy here, I don't know which copy you used.

A. Senate Document 47.

Q. Page 881 of Senate Document 47, it is— 39873

Mr. Chambers: No, let him find it.

Mr. Ransom: Well, where do you find it (handing book)?

Mr. Chambers: You may be looking in the wrong place.

The Master: I am sorry that this complaint made any reference to the period from 1906 to 1917.

Mr. Chambers: Why should the Master be sorry when complainant frames its own complaint?

The Master: Because it takes up a lot of useless time.

Mr. Chambers: Why should the Master care how the complainant frames its cause of action?

The Master: Because it will force me in my judgment to allow in this for all of these years, and I do not think it gets us anywhere.

Mr. Chambers: I except to the Master's statement.

The Witness: Pages 881 to 883, inclusive, of the Senate Document 47.

39875 The Master: Where does Rowland say there is only 6 small holders, where does he say that?

The Witness: He does not say it that way, but going over this in connection with the property, there were 6 small holders, and here are the holders that go in that, there was 6 tanks and 4 holders.

Q. Not 6 holders, 4 holders and 6 tanks?

A. Well, 4 holders and engine house—

The Master: You are reading from page 881, which says 6 holder tanks of 94 feet in diameter and so forth and 4 telescopic gas holders, is that right?

39876 The Witness: Yes.

The Master: Is that what you had reference to on your Exhibit 261, that Rowland's appraisal says in 1881 the station was composed of 6 small holders?

The Witness: Yes, that and the information contained on the following two pages.

Mr. Chambers: What is the information contained on the following two pages?

The Witness: It lists all the property there.

The Master: What is there on the following two pages that changes that statement any?

The Witness: It does not change it any.

The Master: What do you mean by modified by the following two pages?

Mr. Chambers: I object to the cross-examination of the witness in that manner.

The Master: I don't care what you object, I will find out what he says he means on this.

The Witness: There is other stuff connected with the holder station.

The Master: You were asked the question to point out where in Rowland's appraisal it showed that in 1884 this station comprised 6 small 39878
holders, valve house, boiler house, etc. Now, I take it that that was intended to mean that that is all that showed, 6 small holders?

The Witness: Well now, I meant that it included auxiliaries around the station.

The Master: But you did not intend to have it show 6 small holders and 4 large ones, did you?

The Witness: No.

The Master: All you intended by this statement was that it had 6 small holders?

The Witness: But those are 6 holder tanks and 4 holders in those tanks, and 2 tanks had no holders in them. There were only 4 holders there 39879
complete, the others were tanks, according to this.

Mr. Chambers: I object to the Master trying to do what I think is unfair to the witness, and I take an exception.

The Witness: Those 4 are tanks, 2 of them have no holders in them, part of a holder.

Mr. Ransom: I would like to read into the record what the Rowland appraisal says in that respect.

The Master: Well, is there much of it?

Mr. Ransom: No, just "6 gas holder tanks of 94 feet diameter 26 feet depth to footing of stones, built of brick with concrete bottom, $228,000; 4 telescopic gas holders 92 feet 6 inches in diameter, lower lift 91 feet in diameter of upper lift, 26 feet height of each lift, 2 holders with cast iron and 2 with wrought iron columns, all with 20 inch inlet pipe, each holder having a capacity of 325,000 feet at $26,000, $104,000."

Mr. O'Brien: Are you testifying now, or is this a question?

39881 The Master: Next question.

By Mr. Ransom:

Q. Did you not ascertain that 2 of the holders built within the 6 tanks which were in existence at the time of the Rowland appraisal were constructed after 1884?

A. No.

Q. In making the adjustments as to the book cost of 111th Street station as of 1906, shown on Table 262, Exhibit AA-418, did you exclude altogether Block 1683, Lot 18, upon which are located the mains school and the street department headquarters, the brick storage building, the electrically operated derrick and so forth?

39882 A. I attempted to.

The Master: You intended to?

The Witness: Yes.

Mr. Chambers: He said he attempted to.

The Master: And I ask him if he intended to.

Mr. Chambers: He intended to?

The Master: Yes.

Mr. Chambers: Yes.

Q. And you excluded that as to this whole period as of 1906?

A. Yes.

Q. You of course had no knowledge at that partic-

ular time of its use or of the company's business at that time, of your own knowledge?

A. No.

Q. You also excluded from 262, in making what you call an adjusted book cost of this 111th Street station, as of 1906 and the years before that, the 250 easterly feet of Block 1704, whereon were then located the stable, the garage, the emergency wagon house, the wagon shed, the blacksmith shop, coke handling apparatus and so on?

A. I attempted to exclude it, the easterly portion of the block. 39884

Q. And everything on it?

A. And everything on it.

Q. In making the adjustment of book cost of the 44th Street station, as of December 31, 1914, on Table 263?

A. There was no adjustment in 1906.

The Master: Why wasn't there a 1906 adjustment?

The Witness: I do not believe there was any dispute about the cost there then, or any question about the use and usefulness of this station. In 1913 or thereabouts, it was condemned by the City, it has not been credited on the books yet, 39885 and that is the reason for this deduction here.

Q. You included one-half of the brick wall at $5,000, the fourth item?

A. Yes.

Q. Now, Senate Document 47, at page 897 describes this fence in detail. Do you remember it?

A. I remember it gave some sort of a location on it.

Q. Doesn't it give it in the fullest detail, not merely its location?

A. I do not remember in detail. It gives a description of the style.

Mr. Chambers: I object on the ground the Senate Document will speak for itself.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. It gives the height and width and location and everything about it?

Mr. Chambers: Whatever it is, the document is in.

A. No, it says that the 44th and 45th Street property is surrounded in part by 861 1 2 feet of 8 inch brick wall, then it describes the style in some detail,
39887 but just not which part of the block or what lot it goes around.

Q. And it tells about the kind of a wall and so on?

A. Oh, yes.

Q. Hasn't that fence in practical entirety remained in use from 1884 to 1914, and from 1914 down to the present time?

A. I could not tell where that fence was in 1914.

Q. You mean you did not try to tell?

A. I could not tell, I did try to tell but I could not tell from that figure there.

The Master: Well, whether he tried or did not try, he guessed at the result.

39888 Mr. Chambers: No, I object to that.

The Master: Why do you object to it? Mr. Hine says that himself, he assumed that half of it remained, he guessed at it.

Mr. Chambers: He did not say he guessed.

The Master: He had to guess at it if he did not know where it was.

Mr. Chambers: Well, he did not use that word.

The Master: Well, he will say that now, I am quite sure, if I ask him. Have I made a correct statement, Mr. Hine?

The Witness: I do not think I would say I guessed.

The Master: What would you call it?

The Witness: I would call it "estimated."

Q. Well, why did you hit one-half of it as the part?

The Master: Well, don't ask again, he estimated it, and he guessed at it, and they are the same thing in my mind.

Mr. Chambers: Well, I object to the use of the word "guess."

Q. You have no knowledge about it?

A. I have no knowledge of where it was.

The Master: He don't know how much there was. You could not tell us how much remained, 39890
and where it was?

The Witness: No, it might be all gone.

Q. Or it might be all there?

A. It may be all there.

The Master: I don't know how you could draw a distinction between estimating and guessing under these circumstances, with these explanations by the witness.

Q. Likewise this Table 263, as to the storage house, 12 feet in diameter, you call this table, "Adjusted Book Cost." I suppose you mean adjusted by elimination, do you?

Mr. O'Brien: What was that word? 39891

The Master: Adjusted by elimination; I think that is a very apt description of it.

Q. You do not undertake to give the book cost for this storage house, but you give what you call an estimated figure, is that right?

A. Because I found it impossible to locate that storage house in the list of property shown by Exhibit 47, or Senate Document 47.

The Master: On what basis did you estimate it?

The Witness: Just on the basis of the comparative size of that as compared with the governor

house. The governor house was included in Senate Document 47 at $2,900, and this is a much smaller house, and I put it in at $1,500.

Q. That is all the basis on which you estimated it?

A. That was all.

Q. That was your entire computation on it?

A. Yes, sir.

Q. Where do you include in this Table 263 of Adjusted Book Cost of 44th Street station as of December 31, 1914, the brick fence or wall across the westerly end of Block 1092, Lot 7?

30803 A. Could I see Senate Document 47?

Q. Yes (handing book). You are looking in—

The Master: He is looking at Senate Document 47, he just asked for it.

A. Well, I find a memorandum here now as to the old number of that block, and all that is included for fences is that one-half of a brick wall, or all on account of brick wall is that one-half of brick wall taken from Senate Document 47, page 897.

Q. Well, didn't you find from the book, or from your observation, that there was a brick wall or high brick fence across the westerly end of Block 1092, Lot 7?

30804 A. I believe that there is such a wall, yes.

Q. Built at a cost of over $4,000?

A. I don't know.

Q. Didn't you find that in the book or anywhere else?

A. I did not, no.

Q. Built subsequently to the Rowland appraisal?

A. I don't know.

Q. Did you read the testimony of the witness Ulrich about the building of that wall?

A. I did.

Q. But you left out the wall?

A. If he testified that it was in there, I have not included an extra amount for that.

Q. Or any amount for that?

A. Except as in so far as I have stated it may be part of that wall claimed by Rowland. If it was built since 1884 or not—

Q. (Interrupting.) Built early in 1914.

A. Just one minute, then. (Examining papers.) According to Exhibit 185, in evidence, there was no such wall there charged to the plant account. That is a Teele exhibit.

Q. How did you assume such a wall got there? 39896

A. Well, it must have been—this is attempting only to show the plant account. It must have been charged, then, to some other account.

Q. You did not examine or include at all, the entries for construction work which have been made in connection with the 44th Street property subsequently to the taking of a part of the same by the City, and have been held in suspense pending the adjustment of the condemnation proceeding?

A. No.

Q. All those items are left out of your schedule?

Mr. Chambers: I object to it.

A. If there are any items in Suspense Account, they 39897
are not here included, this is construction.

Mr. Ransom: Will your Honor suspend some time this afternoon, so that we can get the rest of those tables? I am about to take up an entirely different phase of Mr. Hine's examination.

The Master: You are going to take up that depreciation?

Mr. Ransom: Yes.

The Master: Well, take it up.

Mr. Ransom: Well, it will probably take more than the rest of the afternoon.

30898 Willard F. Hine, Cross.

The Master: Well, the trouble is, if I take Mr. Maltbie now, we will have to stop about half past five.

Mr. Chambers: Why?

The Master: Why, it cannot take very long to hand those tables in.

Mr. Ransom: Well, I do not know how many there are of them.

The Master: How many are there?

Mr. Maltbie: It won't take long, I have only this one table.

30899 Q. Mr. Hine, in your Table 275, Exhibit 424, which you call Book Cost of Fixed Capital, 1905 to 1918—

The Master (interrupting): Adjusted Book Cost.

Q. Adjusted Book Cost, except such lands and buildings as you have left out.

Mr. Chambers: I object to that.

The Master: Well, that is the fact, "Except land and certain improvements"—

Mr. Chambers (interrupting): Well, that is not—he has not left anything out.

The Master: What does that mean?

The Witness: That certain buildings refers

30900 specifically to buildings that are included in Real Estate Account.

The Master: They are left out of this, aren't they?

The Witness: They are not in this, no.

The Master: Well, then, Mr. Ransom was right, they are left out of this.

Mr. Chambers: Well, left out means—

The Master: Left out means what it means, and that is what the witness says.

Mr. Chambers: They are not in. That is the way to say it.

Q. Have you made any calculation or estimate of the appreciation in the market value of the various elements and items of property shown on this Table 275, since they were severally built or acquired by the complainant company?

A. No.

The Master: You are on Table 275?

Mr. Ransom: Table 275 for a minute, yes.

The Master: I thought there was another schedule with relation to depreciation?

Mr. Ransom: Well, that is 276, I am coming to that in a minute. 39902

Q. What you have done in 275 and 276, you have calculated what you call depreciation of property, but have not made any calculation of the appreciation of property?

A. I do not believe there has been any.

The Master: How do you know?

The Witness: I say I do not believe there has been any on this property.

The Master: What do you know about it?

The Witness: Well, I am familiar with one things, that as the age of a property goes on, it certainly is not worth as much as new property.

The Master: What experience have you had 39903 in this branch of the case?

Mr. Chambers: Just a minute, I think counsel for complainant ought to cross-examine.

The Master: I want to know, and I am going to strike out these statements—

Mr. Chambers: You are going to strike them out before you hear anything about them?

Q. Is it your judgment that the 57th Street building is not worth more than when it was built?

A. I have no judgment on that particular building.

Q. Do you mean to say that the general office building is not more worth than when it was built?

A. I have no judgment on that building.

The Master: Haven't you depreciated that?

The Witness: No, sir.

Mr. Chambers: Have you depreciated anything that should not be depreciated?

Q. Do you mean to say that the materials which have gone into plant haven't higher market value today than they did when they were acquired?

A. Undoubtedly, most materials have a considerably
30905 higher cost today than when they were acquired.

By the Master:

Q. How do you arrive at a question of depreciation? Take any one of these plants, plant structures that cost to build, we will say, $100,000, what do you depreciate them, so much a year?

A. Yes.

Q. On what basis?

A. On the basis of 50 years' life for a manufacturing plant.

Q. Does that include the buildings?

A. That includes the buildings and all the structures, and considering the use to which they are put.

30906 Q. Any machinery in them?

A. Everything included in the plant, the manufacturing plant including the holders, in total.

Q. No matter how much replacement there has been?

A. Well no, as it is replaced I consider everything that is replaced as new. That is, here is the thing, if they had, just to take a sample instance, if there was one boiler testified to, and that was put in 20 years ago, and 10 years later another one was put in, I would not consider the whole thing 20 years old, but it would be the average of the two.

The Master: What did you take the 21st Street plant, how did you depreciate that?

The Witness: By taking the cost, the book cost of each addition, year by year, and assuming that each year it has depreciated one fiftieth of the cost, and every part that was taken out that is to be replaced by some other new part I have taken it out on the average that it was 50 years old, so that that would tend to offset the depreciation that was remaining.

By the Master:

Q. On what basis did you figure 50 years? 39908

A. On my experience and on the life of—

Q. What experience?

A. Well, I have made studies of the life of buildings and apparatus going to make a gas works.

Q. Well now, do you undertake to say that, take one of these structures, not the machinery, that you could rebuild it today and depreciate it back to the time that it was built and find that it was worth less than at the time it was built?

A. I do not believe I just got that question.

Q. You take a structure that costs $100,000 to build 20 years ago.

Mr. Chambers: I object, unless you say what 39909 kind of a structure.

The Master: I haven't got time to go into the details, but I will go into details later on. I want to get his general views first.

Mr. O'Brien: But your Honor, Mr. Ransom had not proceeded very far with his examination when you took over the cross-examination of the witness.

The Master: I know he hadn't.

Mr. Chambers: I think counsel—

The Master: Take any of these manufacturing structures—

Mr. Chambers: May I object?

Q. (Continuing.) The details of which we can refer to later on, built 20 years, we will say, 25 years ago, to make it easy?

A. Yes.

Q. For $100,000, half its life is gone, isn't it?

A. Yes.

Q. You have depreciated it 50 per cent?

Mr. Chambers: Just a minute.

30911 Q. Is that correct?

Mr. Chambers: Just a minute. I object to the Master's questions, and I think counsel for the complainant ought to do his own cross-examining.

The Master: Yes, I do too.

Mr. Chambers: And I object to the Master's question because I do not believe it is fair.

The Master: I don't agree with you. I want to get the witness's testimony clear in my own mind, in my own way.

Mr. Chambers: But, your Honor, you are getting into a controversy with the witness.

30912 The Master: I am not getting into a controversy with the witness.

Mr. Chambers: Your examination is really argumentative.

The Master: I am trying to find out how the witness arrived at his figures.

Mr. O'Brien: If you could go outside and see how you talk, you would see how it is. It is really argumentative—the tone of the voice, the manner in which you press your viewpoint it is all argumentative.

Q. Now, Mr. Hine, I have taken a building twenty-five years old which according to your calculation cost $100,000 when it was built, an ordinary manufacturing structure. You depreciated that 50 per cent?

A. Yes, sir.

Q. Is it your testimony that if you took that building, reproduced it today, that its cost of reproduction new, depreciated back to the 50 per cent basis for the number of years of its life, would show that building had no greater value than it had, or had less value than it had, when it was built?

A. I do not seem to gather that. That is, that the 39014
cost of reproduction new today—

Q. Let me put it another way. How much in your judgment would it cost to reproduce new today a brick building, see?

A. Yes.

Q. That cost $100,000 to build twenty-five years ago?

Mr. Chambers: Just a minute. I object to that on the ground that I do not think the question is proper; it is incompetent, irrelevant and immaterial, and no evidence has been offered by us at all on reproduction cost new as of the present time. 39015

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. What in your opinion would it cost today to put up a building of the same character, of the same material, when it cost $100,000 to put it up twenty-five years ago?

Mr. Chambers: Just a minute. I object to that as incompetent, irrelevant, immaterial and not proper cross-examination.

The Master: You objected to it once.

Mr. Chambers: Well, we are not interested at all in it, and it is unfair to bring up the question of cost of reproduction new as of today.

The Master: Objection overruled.

Mr. Chambers: We are in abnormal times. We have offered no evidence about it. Exception.

Mr. O'Brien: You yourself have expressed yourself very emphatically on the point, your Honor.

The Master: I may express myself again.

3991T Mr. Chambers: I take an exception.

Q. Mr. Hine, will you please tell me your opinion on that point?

A. My rough judgment on that would be that the building which twenty-five years ago cost $100,000 to erect would cost now, erected new, or a similar building erected new under the conditions that exist today, from $185,000 to $200,000.

Q. Yes, nearly double?

A. Yes.

Q. So that on that basis of reproduction what would you depreciate it if you were trying to figure it out on that basis—reproduction, less depreciation?

3991S A. Reproduction cost new, less depreciation?

Q. Yes, what element of depreciation would you put into it?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

A. I would—

Q. Take the 50 per cent?

A. Take the 50 per cent, yes.

Q. That would bring it to $100,000, roughly?

A. Reproduction cost new, yes.

Q. With the same basis of depreciation?

A. Yes.

Q. So that you take a building costing $100,000 twenty-five years ago, without regard to any analysis of its present condition, and you would depreciate it a flat 50 per cent?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. That is not what he did do.

Q. Isn't that what you did?

A. Well, I did not just take a building; I took the plant as a whole. 30020

Q. No, but in principle that is what you did, is it not?

A. I have assumed—I think I would have to explain the factor and the way this looks to me.

Q. No, but let me know, isn't that in principle what you did?

Mr. Chambers: No, I object.

The Master: You took that principle, assuming nothing else added to it?

A. Yes.

Q. No changed condition. You took a flat 50 per cent on the cost of construction twenty-five years ago; isn't that so? 30021

Mr. Chambers: I object as being incompetent, irrelevant and immaterial, and not proper—not a proper question not proper cross-examination, not proper examination by anybody.

Mr. O'Brien: Not only that, your Honor, but you paraphase his statement or testimony and try to assume something that he did not testify in his answer. He said—and he emphasized what he said—he took the whole plant.

The Master: Just make your objection. Do not tell me what he said.

Mr. O'Brien: If you are going to have an argument let us turn this into a symposium and I will give you my argument and you can express yours.

The Master: Have you an objection?

Mr. O'Brien: Yes, certainly, a protest and objection.

The Master: The protest and objection are overruled.

Mr O'Brien: Exception.

Q. Is that what you did, Mr. Hine?

39023 Mr. O'Brien: You are separating the building. He told you he took the whole thing together, with whatever compensatory features there might be, taking plants of various ages and various parts of the plant.

Q. Yes, in principle what you did was to take a flat depreciation; isn't that so?

Mr. Chambers: Same objection to the Master's question, and exception.

A. That in principle, I think, is so, but I do think it needs an explanation.

Q. Now, wait a minute.

Mr. Chambers: I suggest that he explain it.

39024 Why not?

A. I understand you are just taking that as an example?

Q. I have not in mind any particular building in which there was any apparatus; you see what I mean?

A. Yes.

Q. There may be some building or buildings among these that have no apparatus to confuse the situation.

Mr. Ransom: 57th Street.

The Master: That is a new office building.

Mr. Chambers: We have not touched that at all.

39925

The Master: He said he did not depreciate that.

Q. I am taking an old building; that is what I want to get at. Assume that building without any apparatus in it, that there never was any apparatus in it, and used for some other purpose, for a meter house or some other purpose, I do not remember—the result of your calculation would be that the building that cost $100,000 twenty-five years ago would now be carried at fifty, according to your depreciation figure?

39926

Mr. Chambers: Why, it may have fallen down before now.

The Master: Isn't that so?

A. Yes.

Q. Although if you take the basis of reproduction new, less the same depreciation of 50 per cent, the building would be worth precisely as much today as when it was built; isn't that so?

A. Yes.

The Master: We will suspend with Mr. Hine until tomorrow morning.

Mr. Chambers: I move to strike out the answers made to the Master's questions.

39927

The Master: The motion is denied.

Mr. O'Brien: Exception on behalf of the defendant Edward Swann.

The Master: It will be noted.

MILO R. MALTBIE, resumed:

DIRECT-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. Mr. Maltbie, in your opinion in this case, from your study of it, or in your opinion from a study of

the condition of the Consolidated Gas Company, should any allowance be made, in ascertaining a fair return, for construction capital?

Mr. Ransom: Objected to as incompetent.

The Master: For what?

Mr. Chambers: Construction capital.

The Master: I will take it.

Mr. Ransom: Exception.

A. There should be under the circumstances of this case, and the way the—

The Master: I did not hear it.

30029 The Witness: There should be under the circumstances of this case.

The Master: There should be?

The Witness: Should be, yes.

Q. What do you mean by construction capital?

Mr. Ransom: Objected to as incompetent.

The Master: Overruled.

Mr. Ransom: Exception.

A. The amount of money and materials which the company would have to pay for in advance of charging the work done and the mains laid and the structures erected—

By the Master:

30030 Q. Well, that is really a little more working capital, is it not?

A. No, there is a difference between that and working capital.

Q. You call it something else?

A. This is for construction. This is for construction; this is for construction purposes, it is not for operating the company.

Q. It is money that you have on hand, that you allow them to have a return on?

A. Yes, they should have a return on it.

The Master: Go ahead; I get the distinction.

By Mr. Chambers:

Q. Should it be limited in your opinion to work done by the Consolidated Gas Company on its own plant?

A. It should.

Q. Explain what you mean by that.

The Master: Well, I understand what he means by that.

Mr. Ransom: This is all over my objection and exception as to the qualifications of this witness. 39932

Mr. Chambers: Will you have him state what he means?

The Master: No, I understand what you mean by that. Not material that you will need to construct property for the new companies; is that what you mean?

The Witness: Property and moneys.

The Master: For other companies?

The Witness: Yes.

The Master: I understood that.

Q. Will you tell me, please, if you have a figure which you give and which represents in your opinion an amount for construction capital for 1906 to 1918 inclusive? 39933

Mr. Ransom: Objected to as incompetent, the qualifications of the witness not being shown, and not a proper matter for opinion evidence.

The Master: I will allow it on the same theory that I took Mr. Maltbie's opinion as to working capital, as an accountant's theory of what would be proper.

Mr. Ransom: It is a matter of business judgment, experience and a fact and not an opinion.

The Master: I will take it.

Mr. Ransom: Exception.

A. I have such figures.

Q. Will you please give them, Mr. Maltbie?

A. Beginning with the year 1906, $200,000. I should say that all of these figures are the average for the entire year.

By the Master:

Q. 1906, $200,000?

A. 1906, $200,000; 1907, $200,000; 1908, $180,000; 1909, $200,000; 1910, $300,000; 1911, 30935 $300,000; 1912, $300,000; 1913, $200,000; from 1914 to 1918—I can give 1919 now, too, inclusive—for each year of that six year period, $180,000.

Q. Including 1919?

A. Including 1919—for the eight months of 1919.

Mr. Ransom: Or ten months.

The Witness: No.

Q. You mean on the basis of $180,000 a year?

A. Yes, but that would be the amount which they would carry right through each one of the months, on an average, of course.

By Mr. Chambers:

Q. In the various valuation cases where you made 30936 the valuations since you left the Public Service Commission, and in your decisions while you were with the Public Service Commission, did you determine whether depreciation should be deducted in obtaining the amount upon which a company was entitled to a return?

Mr. Ransom: Objected to as incompetent.

The Master: That objection will be sustained.

Mr. Chambers: Exception. You allowed Mr. Allison to testify to that.

The Master: Not as to what he decided when he was a Commissioner.

Mr. Chambers: No, but you allowed him to testify on that subject.

The Master: I did not allow him to testify as to what he did when he was a Commissioner or a judge?

Q. Should depreciation be deducted?

Mr. Ransom: Objected to; it is a question of law.

Q. (Continued.) In determining the amount upon which this company or any company is entitled to a return—not giving the amount?

Mr. Ransom: Objected to. 39938

The Master: That will be sustained as calling for a conclusion of law.

Mr. Chambers: But I call your attention to the fact that you allowed Mr. Allison to testify categorically to that very question and that very subject, and I have looked it up.

The Master: Not in that way.

Mr. Chambers: All right, I take an exception. Then I move to strike out all that Mr. Allison said.

The Master: I will let Mr. Maltbie state whether in his opinion in arriving at the value of the property used in the gas making business 39939 depreciation should be deducted?

Mr. Ransom: Objected to as incompetent.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Witness: In my opinion it should be deducted in arriving at the fair value, both from original costs and reproduction cost.

The Master: You see, Mr. Chambers, there is a good deal of difference in asking the one question and the other.

Q. What do you understand depreciation to mean?

Mr. Ransom: Objected to as incompetent.

The Master: I will take his understanding of what it means.

Mr. Ransom: It is wholly incompetent.

The Master: The objection is overruled.

Mr. Ransom: Exception.

Mr. Chambers: You did not think so when you offered it with Mr. Allison.

A. It means the decrease in worth—

The Master: You mean in your opinion.

39941 The Witness: Well, this is the commonly accepted definition.

Mr. Ransom: I move to strike that out.

The Master: No, I cannot strike it out physically.

Mr. Chambers: I object to striking it out.

The Master: I will take the witness's opinion of what it means.

The Witness: It is the decrease in worth or value due to all causes, such as wear and tear, decay, obsolescence, inadequacy.

By the Master:

Q. Well, suppose a plant was built to produce ten
39942 million cubic feet of gas twenty-five years ago and it today produces ten million cubic feet of gas, that it costs no more today to produce that ten million cubic feet of gas than it did twenty-five years ago, but the building is twenty-five years old and the apparatus is old and all the rest of it, it is your judgment that that plant has depreciated?

A. May I ask, did you say it cost no more to produce gas today?

Q. Yes, I am assuming the cost of labor and material and the like is just the same.

A. To produce a plant, you mean?

Q. No, to produce gas. What I want to get clear is this: You say in your opinion you have got to take depreciation?

A. Yes.

Q. Due to obsolescence, age and the rest of it?

A. Inadequacy, and so on.

Q. Age you included?

A. I did not mention age, but age—

Q. I thought you did?

A. I said wear and tear, decay, inadequacy and obsolescence.

Mr. Ransom: Doesn't that include age? 30944

The Witness: Age is a method used of measuring the depreciation, not a cause of depreciation.

Q. All right, wear and tear were the two things in my mind.

A. Which am I to answer?

Q. Answer me and do not mind the rest of counsel around the table. What I want you to answer is this—whether it is your opinion or whether you intend by your answer to say, taking a plant built twenty-five years ago to produce ten million cubic feet of gas, and which did, and with a certain amount of material and labor, and that plant today will produce ten 30945 million cubic feet of gas with the same amount of material and labor, and it does not cost one cent more to produce it and it does not take a minute longer to make it, the same quantity of production comes out of it—do you say that that has depreciated?

A. What period did you use?

Q. Twenty-five years. Do you say it has depreciated?

A. Well, after twenty-five years' expiration it is pretty hard to understand how a plant will do that; but assuming—

Q. But suppose it does?

A. Assuming that is the case?

Q. Yes.

A. I should say there is depreciation on that plant, yes, sir.

Q. How much?

A. I am not prepared to fix the amount.

Q. How has it depreciated? It produces the same and has the same productive power?

A. Yes, so does a pile of wood that you put into your stove. Let me just go on with that illustration.
39947 You are putting in a chunk of wood into your stove right along, but that woodpile is depreciating in value. You are getting 100 per cent service, you are getting heat right along, but that woodpile is depreciating in value.

Q. I do not follow that at all. You are taking away from it all the time?

A. The value of a property or the value of anything depends upon the amount of future service that it will render, the amount of service that is still in it.

Q. What is the best test of what it will do, if I give you as a premise that it is actually doing it now?

Mr. Chambers: May I suggest that we have
39948 Mr. Maltbie finish that? He did not finish.

The Master: No.

Mr. Chambers: He was on a very nice subject.

Mr. Ransom: This is all over my objection and exception.

The Master: Yes, I want to get the witness's opinions on these things.

Mr. O'Brien: Your Honor will note I am silent here, but for politeness' sake only now.

The Master: Yes, note, Mr. Stenographer, that Mr. O'Brien for once is silent but apologizes for it.

Mr. O'Brien: I mean to say I will make my objections at the right time.

Mr. Chambers: His silence speaks volumes.

The Master: Let us get this. We only have another minute or two.

Mr. Chambers: Well, I want to go right along with it and finish it.

The Master: I want to ask Mr. Maltbie one other question.

A. Let me answer that now, your Honor?

Q. Yes.

A. Whether you agree with it or not, I want you to 39950
get my reasons.

Mr. Ransom: I object to all this speculative theory with which the record is being piled up by these Doctors of Philosophy.

The Witness: To which counsel gave assent one time himself.

The Master: Answer the question.

Mr. O'Brien: This all brings up the spectre of Miller and the medicineman Allison

The Master: Note that Mr. O'Brien's good behaviour is at an end.

The Witness: When you start out with anything there is a certain amount of service it will 39951
render, and it has value because it will render that service. Now, as time goes on the amount of remaining service which that thing will render decreases as you go along, and consequently the value of that commodity or article or plant, whatever it may be, decreases in value because the person who owns it has a shorter and shorter time to get service out of that plant, or anything.

The Master: I do not want to get into a discussion with you; I wanted to make clear the

theory on which you were reasoning, and I am just going to ask one more question, and when that is answered we will adjourn.

Mr. Chambers: I have a lot more questions, and the table, but I can let the questions go and put in the table.

The Master: I will ask one more question, then.

Q. I gave you as a case, possibly a case that you won't find, where after 25 years the plant had been so handled, and perhaps the machinery replaced from
39953 time to time, new pumps put in and new engines put in that as a matter of fact at the end of 25 years it was doing precisely what it started out to do. Don't you have to assume that it will continue to do it just as you assume it at the start?

A. You may by replacements and renewals keep that plant going on, but there is some part of it that has decreased in value, and when you start out with a new plant you start out with everything new, with everything having 100 per cent of its service built in it. Now, whenever you come across that plant in some future time, although there are certain parts may be new and those parts may have 100 per cent service value
39954 in them because they are new and just starting upon their period of life, there are always some parts of the plant that do not have that thing and to that extent those parts will decrease the value of the whole.

The Master: Then go on with your tables, Mr. Chambers.

Mr. Chambers: There are some more questions on that I would like to ask, or I will let them go until the morning.

The Master: No, proceed now.

Mr. Chambers: On depreciation, I mean.

The Master: Have you got your foundation for your table?

Mr. Chambers: Yes, I am going to ask him those questions.

By Mr. Chambers:

Q. Have you prepared a rate base table from 1906 to 1918?

A. I think you will have to ask some of those questions before you can put the table in.

Q. You prepared a table known as Table 295?

A. I have.

Q. And it is designated, "Rate Base Founded on Cost"?

A. That is correct. 39056

Q. And in the first, No. 1 is the land, Mr. Maltbie?

A. Yes.

By the Master:

Q. Do you mean by "Cost" the adjusted cost?

A. Well, I can give in each item the source from which these figures are obtained?

The Master: Do that.

By Mr. Chambers:

Q. Will you state first the source of the land?

A. Land was taken from Table 5.

Mr. Ransom: Building error on error, theory on theory. 39057

Q. Other fixed capital?

A. Taken from Table 277.

The Master: Don't you see how easy it is to knock a whole house out?

Mr. Ransom: But they have printed fifteen or twenty volumes of this testimony—

The Master: But the Gas Company has counsel who won't permit the Court to be misled.

Q. Other fixed capital, Table 277. Working capital, being Item 3?

A. That is from Table 290.

Q. And Item 4?

A. Construction capital. Those are the figures I have just given.

Q. Item No. 5?

A. Item 5, engineering, administration, etc., has no figures given opposite it, because the amounts charged on the books of the company are included in the amounts above.

The Master: As to Items 6, 7, 8 and 9 you have made the statements opposite those items?

The Witness: I have.

30959 Mr. Chambers: That is explained. Those explain them.

The Witness: No, they do not explain them.

The Master: They do not explain them, but they explain why there are no figures there.

Q. Organization?

The Master: He says, "No foundation separate from above figures."

Q. Any explanation you want to make for that, Mr. Maltbie?

A. Well, as to that amount I have searched and had searched the opening entries upon the books of the Consolidated Company. I have had the balance sheets
30960 and the accounts examined for the first few years of the company, and the balance sheets analyzed for the last years of the company; but I have been unable to find any organization expenses separately noted. If they are included in the book figures or any of the land or other fixed capital, why, they are included in the figures above.

Q. Item No. 7, interest and taxes?

A. The same statement applies to that item. Further, the evidence contains the statement that in recent years, at least, there has been no charge to fixed capital account for interest and taxes during construc-

39061

tion, and in this connection I should say that because of including no item here opposite interest and taxes I have allowed construction capital. If an allowance had been made for interest and taxes during construction, there would be no construction capital allowed, because they are of a similar character and the one being allowed the other should not be.

Q. Now, franchises, in Item 8.

A. That statement there is that actual cost not obtainable as the books of the original companies have not been produced.

Q. Going value?

39062

A. None, as I understand it. None is claimed in this case by the complainant and none has been included here.

Q. In Item 10 you have totalled up the above items for each year 1906 to 1918, inclusive?

A. I have.

Q. In Item 11 down here you have listed separately the general office property, land and building?

A. I have. The land in each instance comes from Table 5 and the building item comes in each instance from Table 27.

Q. And Item 12 is the 57th Street property?

A. Yes, I have just covered that by explaining what land is, where the figure was obtained from for general office property and West 57th Street property, and also the building figure.

39063

By the Master:

Q. You say, "If the general office building is to be included in the rate base the figures of cost for that land and building here given should be added to the total cost given above," but you do not say anything about the West 57th Street property. Is it your contention that the 57th Street property must not be taken at all?

A. According to Senator Boylan's figures allowance should be made another way.

Q. In what other way?

A. Why, by getting facilities elsewhere.

Q. Oh, you say it should not be taken as a part of the rate base at all?

A. No. Of course an allowance must be made for the rental that would be paid if this is taken out of the rate base entirely.

Q. But you do not say anything on the rate base about that?

3[0965] A. No.

Mr. Chambers: I offer the statement in evidence.

The Witness: There is just one thing more, your Honor, should be explained before that, and that is that the figures for each one of the years are obtained by averaging, taking the figure at the end of the preceding year or the beginning of that year and the figure at the end of the year, adding them together and dividing them by 2. This is the average rate for each year.

Q. I suppose that in these figures are all of these depreciated items that have been shown up in other

3[0966] schedules?

A. Oh, yes.

Q. And the property has been eliminated that you have attempted to eliminate in other schedules?

A. Precisely.

Mr. Ransom: All omissions.

Q. And this is all up on the theory of the state's case as to what it ought to be?

Mr. Chambers: That is all.

A. That is correct.

Q. And if I rule against the State on any of the items, there is nothing for me to do except to throw this out?

A. No, I should say that if you ruled against the State on one of them, for instance, you would throw that item out and take the rest.

Q. And recalculate this whole thing?

A. Yes.

Q. In other words, in 1909, if a piece of property was used and useful that you say was not used and useful, and I increase that a little bit, then I have to readjust that table a little bit?

A. Oh, if you put that piece of property in for the whole period where we have thrown it out, you will have to do that; but that was one reason why we pre- 30068
sented before the tables showing the assessed values, which are not included here, and also a table showing the actual cost of the property, parcel by parcel, so that if you did that very thing you would have something from which to proceed.

The Master: Any objection to this exhibit?

Mr. Ransom: Objected to as incompetent, irrelevant, immaterial, speculative, theoretical, confiscatory.

The Master: In view of the admission of other exhibits to which this relates, and the fact that this gives the Master a picture of the contentions of the State, I am receiving it for that 30069
purpose.

Mr. Ransom: Well, you would not take any of ours and we proved facts and not theories.

The Master: I will take it.

Mr. Ransom: Will you take ours?

The Master: Yes, I will take yours, too.

Mr. Ransom: Exception to the receipt of this paper method of confiscating property.

The Master: I think perhaps I better take the tables prepared by both sides that show the net

results of all their calculations and what they claim.

Mr. Ransom: I object decidedly to the marking of this document as an exhibit.

The Master: Overruled.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-466.

The Master: Have you copies for the other side?

The Witness: I have not blueprints (handing complainant papers).

39971 The Master: I think if I disagree with them as to this, I will take it up and point to it very clearly.

Mr. Ransom: The point is that the case will be argued very largely on exhibits and this will look just as though it was an honest exhibit instead of being a confiscatory document gotten up in an utterly reckless way.

The Master: If your contention is correct that you are losing money on the making of gas, it will not make much difference whether your invested capital is $25,000,000 or $50,000,000.

39972 Adjourned to Friday, February 20, 1920, 9:30 A. M.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 39973

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, February 20, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 39974
MR. O'BRIEN, of Counsel for defendant Swann.

The Master: All right, Mr. Chambers, see if we can save working tomorrow by moving along quickly today.

MILO R. MALTBIE resumed:

DIRECT-EXAMINATION CONTINUED BY MR. CHAMBERS: 39975

Q. Is depreciation limited to deferred maintenance?

Mr. Ransom: I object to that as incompetent.

The Master: I am just wondering whether I want to take any more testimony as to what depreciation is or is not. The witness has stated his definition of depreciation, and has stated that he believes that the plants of this company must be taken at the depreciated value. I think I will sustain the objection. I think it is argumentative.

Mr. Chambers: Exception.

Q. What do you understand by deferred maintenance?

Mr. Ransom: I object to that.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. In determining fair value for rate making purposes should accrued depreciation be deducted from cost new, whether actual cost or reproduction cost is used, in your opinion?

Mr. Ransom: I object to that. Reproduction cost is an actual cost, but this question calls for
39977 a question of law, this hybrid of trying to hitch depreciation, accrued depreciation, this anomalous thing the witness has undertaken to define, to original cost.

Mr. Chambers: I am just showing what you have heretofore claimed.

Mr. Ransom: It is a question of law. You cannot find a thing that I ever said on that.

The Master: In determining the fair value to whom?

Mr. Chambers: The fair value to the Public Service Corporation, the complainant company, we will say.

39978 The Master: Fair value for what, to sell as junk?

Mr. Chambers: For rate making purposes.

The Master: What value do you take for the rate base, the value as junk or the value to the public to produce that much gas, or what?

Mr. Ransom: Or market value.

The Master: Or market value.

Mr. Ransom: They have not attempted to give any figures of present value.

Mr. Chambers: I am asking whether you should include accrued depreciation.

The Master: I am going to decide this case on a theory that neither one of you has argued. I will give you notice now. I am taking this record because all of it will bear upon the result that I reach; but I do not think counsel on either side has really gotten to the point of what value it is that is to be considered, and I don't think any of the courts have.

Mr. Chambers: I have heard that very same thing said by another Judge in another case.

The Master: That may be, but I have given a great deal of thought to it, and I think it is the 39980
fair value of the property, but it is a peculiar kind of value in my judgment,

Mr. Ransom: I agree with you in that.

The Master: That is the base. I will take the witness's answer, it can't do any harm.

Mr. Ransom: Exception. It may simply add about three days to the case, that is all.

A. In my opinion it should be deducted.

Q. Is such deduction to be limited, in your opinion, to deferred maintenance?

The Master: I will sustain the objection to deferred maintenance.

Mr. Ransom: Deferred maintenance is a mat- 39981
ter of fact, a matter of expert engineering knowledge, which this witness has not.

The Master: I will not take his testimony on deferred maintenance, whatever it is.

Mr. Chambers: Exception.

Q. In determining the amount to be deducted for depreciation, what factors should be included, in your opinion?

Mr. Ransom: I object to that.

The Master: I will take it.

Mr. Ransom: Exception.

A. All factors, all causes which would cause a decline in the worth or value of the property, and on the other hand the salvage value or the amount of money which can be obtained from the sale of a unit when it has ceased to be used for the purpose for which it was originally constructed or provided.

The Master: I have got to break in. I hate to do it, but I have got to ask a question. What earthly interest, Mr. Maltbie, has the public in anything but the value that the plant represents to produce the gas that it pays for, what other interest has the public in it? Has the public any interest in how much this plant would sell for as junk?

30083

A. No, I don't think the public has any interest, and I don't think in determining fair value you should take into account what this plant would sell for as junk, assuming that its life is to be terminated arbitrarily. Of course it has an interest in determining what, for example, a tank will sell for when at the end of its useful life it is broken up and the material sold to the junk dealer; but as for having any interest in arbitrarily taking the plant and junking it now, every part of it, before it has completed its normal useful life, before it is necessary that it be replaced because it is inadequate or obsolete or worn out, in that sense I don't think it has any interest in its junk value. Junk value is a factor in determining the value of the property at any time, and also, of course, is a factor in determining how much should be set aside to provide for the replacement or renewal of that piece of property when it wears out, or the provision of a substitute for it.

30084

By the Master:

Q. This is what is in my mind: In order to make gas you have got to have a plant, haven't you?

A. Correct.

Q. The public appreciates that, don't they?

A. Yes.

Q. Or should?

A. Oh, they do.

Q. Now, the public are entitled to have gas made as cheaply as possible in the light of all fair average normal conditions, isn't that the principle?

A. I think so.

Q. All right. In order to make gas you have got to have a plant, haven't you?

A. Correct.

Q. And that plant, capable of producing a certain amount of gas, is of a certain value in the production of that article, irrespective of what it costs, isn't it? 39086

A. I don't think you can say irrespective of what it cost, in my opinion.

Q. That is what I am trying to get at. For instance, I am a gas consumer, what company it is that supplies it I don't know, but I necessarily consume gas in the City of New York. Now, in order to make that gas I know that a manufacturing plant is necessary. I have no idea which plant it is that makes that gas, nor do I know how much it costs the company originally to build the plant, or what its constituent or old company paid for it, or whether the machinery has been replaced a dozen times, or whether it will last another week—I am indicating now the way my mind is running, so I can get your judgment on it, and counsel may have what is in my mind. I do know, however, that today the plant produces gas, and that in order to produce gas I have got to have a plant, new or old, one that will last a week or a month or forty years—what difference does it make, so far as the consumer is concerned, when it was built, how long it will last, how old it is, what it costs, what it would sell for as junk, if today it produces a certain amount 39087

of gas, and the rate is fixed on the basis of an up-to-date modern plant capable of producing gas at the lowest possible price that gas can be produced for in a modern up-to-date plant, having in mind that it costs more to make it in an old plant, and the repairs are more than in a new plant, that that loss is borne by the company and not the consumer, because the rate is fixed, so far as the consumer is concerned, on the basis of an up-to-date plant. That is the question I am trying to get your opinion on, so long as you are giving opinion evidence. Isn't it the value to the consumer of
30989 the production, in other words, must I not find somewhere a unit figure, the value of a plant based upon the number of cubic feet it produces actually?

Mr. Ransom: This is all over my objection and exception, to let this witness make an argument which, if it should be made at all in any court of law, should be made by counsel upon summing up, on a matter as to which this witness has no qualification and argue under oath. That is neither helpful nor within the province of his testimony.

The Master: I have ruled that the witness is qualified to testify on depreciation bearing upon value. Now, I go one step further and rule that
30990 the witness is qualified to give me the amount of value in his opinion that must be considered by me.

Mr. Ransom: One minute he says value, meaning price, and the next minute he says, value, meaning serviceability.

The Master: Don't you see, if Mr. Maltbie in his testimony is not consistent and is not clear in his views, I have got to disregard his views entirely, and reach a conclusion from some other source. I think I will take the testimony.

Mr. Ransom: Exception.

Q. Do you get my point?

A. Now, there are a number of facts, if I understand what you mean, involved in that question. In the first place, in my opinion there isn't any one standard that you can always apply to each and every case for determining the fair value or the fair amount, it is an equitable consideration, that is, the amount upon which you allow the company a fair return is to be derived by an equitable process and not by a rule of thumb. In determining that the cost of the property is an important factor.

Q. I don't want to interrupt you, but my question 39092
relates to what kind of value you refer to when you talk of depreciation. Is it the kind of value that I have been talking about, that is, the value to the consumer because it produces a certain amount of gas, or is it the value of physical property? That is the point of my question.

A. I should say it is the value of the physical property plus such items as are necessary to make the entire plant of the company an operating unit, not the mere physical plant without any of the other expenses, but all of the items which would make it a completed whole.

Q. I still don't think that you have my question. 39093
There is a value to a manufacturing plant, including apparatus, to be sold as junk, isn't there?

A. Yes.

Q. There is a value of an operating plant including the buildings and apparatus, for sale to some other concern which wants to use it for the same purpose, isn't there?

A. Yes.

Q. There is a value to this corporation based upon the amount of money it put into it, and the amount

that it might or might not write off for depreciation, isn't that so?

A. Yes.

Q. There is a value in so far as in an excess profits return is fixed for tax purpose, isn't there?

A. Yes.

Q. There is likewise a value based upon the cost of reproduction new, less depreciation, isn't there?

A. That is one way of getting at the value.

Q. Now, there is, or is there not, another value irrespective of all these considerations and irrespective
39005 of the age of the plant, irrespective of its condition and irrespective of its age or possible future use, is there a distinct and separate value to the property to the consumers of gas based upon the fact that it actually produces a certain amount of gas?

A. Well, I didn't quite understand it before, and I am not sure that I understand it now. If you mean that there is a value to the consumers of gas measured by the value of the service rendered to the consumer, I should say that there is a value to the consumer of the service rendered by the plant, from which you might possibly work back on that basis to a value of the plant assuming a value of the service.

39006 Q. No, what I want to get is whether in your opinion there is a kind of value which is different from the values that I have specified, such as junk value, value as a going plant, value to this company as distinguished from value to somebody else who would buy it, the value of any manufacturing plant manufacturing gas to the consumer represented by some unit, if I can find it, namely, that a modern up-to-date plant, economically operated, will produce a certain amount of gas in a certain way at a certain price, and taking for instance fifty cents as the cost of gas in the holder, which would fairly represent 5 cents, or 2 cents, or

10 cents, or 20 cents a thousand cubic feet to the consumer for the necessary plant which must be used to make that gas?

A. Well, there are units which have been derived per thousand cubic feet of gas sold, for example, of an entire gas plant, if that is what you have in mind.

Q. I am not going to ask you to tell me how to figure it, I am not going to ask you for the basis upon which you figure it. I am trying to get you to tell me whether in your opinion there is a plant value irrespective of its age, cost new or to reproduce, based upon the fact that it does in fact at this time produce a thousand 39998
cubic feet of gas, whether the fact that a plant produces a thousand cubic feet of gas hasn't a value to the public of a certain sum.

A. Irrespective of those factors?

Q. Yes.

A. In my opinion there is not.

By Mr. Chambers:

Q. Mr. Maltbie, are you familiar with the term, "Observed Depreciation"?

Mr. Ransom: I object to that as immaterial and incompetent.

The Master: I will allow it.

Mr. Ransom: Observed depreciation is an en- 39999
gineering question on which this witness has not the slightest qualification.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I have seen it used and heard it used and am familiar with its use.

Q. What is its meaning?

Mr. Ransom: I object to that as immaterial and incompetent. It has been defined by courts and decisions. I am assuming that if this witness should undertake to testify about observed de-

40000 Milo R. Maltbie, Direct.

ciation he would give a definition different from anybody else, but he is not qualified to testify on an engineering matter.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Observed depreciation, as I understand it, and as I use it, is the amount of money which would be required to put a certain property in first-class operating condition as nearly as good as new as it is possible to put a unit or property in.

Q. Do you believe or is it your opinion that the
40001 amount of deprecation to be deducted should be limited to observed depreciation?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

A. It should not be limited to observed depreciation.

Q. Why?

Mr. Ransom: I object to that. It is purely a question—these two questions are purely matters of law, and the idea of letting this witness speculate on matters of law when his past speculations have been entirely unsuccessful, is entirely beyond the province of this case.

40002 The Witness: Not judged by the facts, Counsel.

The Master: Don't get into an argument, Mr. Maltbie. Why don't you think it should be limited to observed depreciation?

A. Because the amount of observed depreciation, as I have just defined it, is not a measure of the decrease in worth or value and the making of a thing as nearly as good as new as possible does not restore it to its original condition where it has 100% of service in it. It may prolong its life, may increase by improvements the amount of service value which it had in

it before these changes and improvements were made, but it never restores it to 100% of service value.

Q. In your opinion, Mr. Maltbie, is there no depreciation where the property is being maintained at 100% efficiency, or is rendering efficient service?

Mr. Ransom: I object to that as incompetent. It does not relate to any specific property or any specific facts.

The Master: Well, it relates specifically to the testimony you introduced by one witness. I think the question is framed in the light of that particular inquiry. 40004

Mr. Chambers: Yes, it is.

The Master: I will allow it.

Mr. Ransom: Exception.

A. In my opinion there is a depreciation notwithstanding the fact that a plant or property may be rendering efficient service at the time.

By the Master:

Q. There is just the point that is in my mind. How is the public interested so far as the cost of gas to the public is concerned?

A. The public is paying, is required to pay, expected to pay a fair return upon the fair value of the property, as the courts have repeatedly defined it, very repeatedly stated it. Now, the fair value of the property is measured, in my opinion, by the remaining service value in that property. Furthermore the consumers are expected as a part of operating expenses, or connected with operating expenses, to provide a sufficient amount to maintain the integrity of the assets of the company, that is, to provide for the replacement or renewal of property when it is worn out. 40005

Q. Yes, on the basis of a new plant?

A. On the basis of the cost of the item and when it was put into the property.

Q. Not at all. I think that is perhaps where you make a mistake in your calculation. Take a new plant, and the repairs will be rather small, won't they?

A. Yes.

Q. There will be some?

A. Yes, very light for the first few years.

Mr. Ransom: That is contrary to the testimony in this case and the experience of the company.

The Master: I am taking the witness's opinion.

Mr. Ransom: But he is not qualified, he does

40007 not know.

The Master: I have ruled that he is.

Mr. Ransom: It is a question of what the actual experience is.

Q. Of course the consumer is not entitled to have a new plant every day?

A. Well, I don't know, he could not have a new plant in the normal operation of a property.

Q. He is entitled to have a normally efficient up-to-date economically operated plant, isn't he?

A. Quite so.

Q. That includes some repairs and replacements?

A. Yes.

40008 Q. If in the fixing of the rate only normal repairs and replacements are included in the amount to be charged for the gas, is he affected by what in fact it costs the company to make it?

A. I think the company is entitled to have paid to it a rate for gas which not only covers the operating expenses but the repairs and renewals.

Q. Normal?

A. Yes.

Q. Not for an old decrepit plant that takes ten times as much as an ordinary plant?

A. I should say they are entitled to the repairs whatever they may be under normal, good management, because in the first few years they would not have heavy repairs.

Q. But take a normal plant, you would not say, would you, taking a 40 or 50-year old plant, that because of its age, whatever the operation may have been, requires an undue percentage of renewals and replacements, that in fixing the rate that undue amount should be included, do you?

A. Well, I should say this: I cannot quite answer that question just as you state it. I would say this, 40010
that if the management of the company has been efficient and normal and in the ordinary progress of the business that plant has become old and the repairs are somewhat heavy, now assuming it has not reached a point where good business judgment would say it ought to have been scrapped, but it has been going along in the progress of the company and under good management and under normal conditions, and the repairs are heavy, that in fixing the amount to be allowed for repairs and for depreciation—

Q. I am limiting my question to repairs and replacements.

A. I cannot see that they should be allowed for 40011
those repairs and disregard the other, because the two things have got to be taken together, and in determining when you are going to retire a unit of property it depends, of course, upon how heavy your annual renewals and replacements are getting to be. Now, it may be that it would be wise to pay rather heavy renewals and repairs, and thus decrease your annual allowance for depreciation, or for the ultimate replacement of the property, but there comes a time when the renewals and replacements become so heavy that it is unwise to continue its use.

40012

Q. Suppose that burden is left to the company and is not shifted to the consumer, what interest has the consumer?

A. The burden as to the replacement of the property?

Q. Yes, and the undue amount of repairs?

A. Of course, he is not interested in the value, just those figures.

Q. Precisely, it is a question, as you said before, of getting an equitable result, isn't it?

A. Yes.

40013 The Master: I think I will get it.

By Mr. Chambers:

Q. You gave your opinion a moment ago in answer to a question of mine, "Is there any depreciation where the property is being maintained at 100 per cent efficiency, or is rendering efficient service." Now, will you give your reason for that opinion?

A. Well, I think I have more or less stated that in answer to the question which the Master has asked.

The Master: I think he has.

A. (Continued.) That there is a decline in the remaining service value of a unit, and therefore a decline in the value of the unit, regardless of the fact
40014 that at the moment it may be giving 100 per cent service, or as nearly 100 per cent as practicable.

Q. In your opinion is each unit of the property of a gas company decreasing in value from year to year?

Mr. Ransom: I object to that as incompetent.

The Master: I will sustain that objection as being already covered.

Mr. Chambers: Exception.

Q. Is there any exception to the rule that each unit of property of a gas company is decreasing in value from year to year?

40015

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Assuming that each of the units of a property is decreasing in value can the whole property have a value equal to its cost new, in your opinion?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained. I think it is argumentative.

Mr. Chambers: Exception.

Q. You will recall, will you, that Mr. Allison, a witness for the complainant company, testified that 40016
while each auto bus would decrease in value from year to year, the fleet of auto busses would not depreciate. Do you believe that that is true?

A. I do not.

Q. Will you explain in your own way as to the value of depreciation as applied to a bus and a fleet of busses?

A. Let us take for illustration ten busses which cost new $50,000. The entire investment in that fleet of auto busses is $50,000. Now, each one of those busses in my opinion, notwithstanding the ordinary repairs and renewals of parts that will be made from time to time, will decrease in value from the time it is put in 40017
use until it is finally withdrawn from service and scrapped. For the purposes of illustration I will assume that those busses have a life of five years, that is, they have a service life of five years in practice. That would be five years from the time they are first put in use until they are scrapped. Now, at the end of one year those original ten busses will have a value of four-fifths of their original cost, or $40,000, and those ten busses at the end of one year, costing $5,000 each, will then have a value of $40,000, and that will proceed, because the fleet, so-called, each lot of auto

busses, the total decreases because each one of parts decreases in value, and the whole value cannot be equal to the cost, because each one of them has decreased in value. Therefore, the total must decrease in value. Now, if at the end of one year the business of the company has grown so that they need another bus, and they have purchased it just before the end of the year, just at the end of the year, they will have then eleven busses at a cost of $5,000 each originally, or a total cost of $55,000 for the entire fleet. The original cost of the ten was $50,000, the original cost of
40019 the eleven is $55,000. Now, if this one just being put in use at the end of the year has no depreciation—as it will not have, of course—the total value of the eleven busses will be $55,000 less the $10,000 depreciation upon the ten busses, or $45,000, so that the fleet, treating of it as a fleet, without seeing how many busses there in it, will at the end of the first year, after the 11th has been purchased, have a value of $45,000.

The Master: Of course that illustration can be kept on year after year in the safe form. You need not proceed any further with that.

A. (Continuing.) Now, if they have provided a depreciation fund on the basis of no scrap value for
40020 these busses, just for purposes of simplicity, they would have provided and set aside out of earnings twenty per cent, that is, one-fifth of the entire cost of the busses when they started, which would be $10,000, which money they can use to purchase that one new bus, and would leave them an investment of $50,000 which they originally put in, and another bus of $5,000, which they had taken out of income, and would leave them $5,000 in addition; and if they needed two more busses they could take $5,000 and put it into the twelfth bus, which would give them a value of property equal to $50,000, the original investment. But,

whether they put that $5,000 into the twelfth bus or not, they would have eleven busses and they would have $5,000, so that the total assets of the company would be equal to the original investment, but the original investment would not be measured by taking an inventory of the property and finding eleven busses there at a cost of $5,000, which would give $55,000. The value of the property would not at any time be equal to the number of busses multiplied by the cost of those busses new.

The Master: Of course what I have said about a gas plant is not applicable in many respects to 40022
busses or railroads or other companies.

The Witness: I am not sure what you have in mind, but this illustration of busses would apply to a plant, because a plant starts out new, and is being added to, it is being extended ordinarily to supply the increasing demand, increased sales of the company, and if that is added and is paid for out of the amount of the depreciation set aside, of course it is not added to the investment. If any part of that plant is decreasing in value it never could have a value equal to the entire cost of the plant, not the investment, but the cost of the entire plant as it is taken at the moment.

40023

Q. Assuming for the moment that there is no accrued depreciation, should the company be allowed a return upon the property constructed out of the depreciation reserve?

Mr. Ransom: I object to that. It is purely a question of law.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. To what items should depreciation be applied, in your opinion?

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The Master: In getting the value, is that the point of your question, Mr. Chambers?

Mr. Chambers: Well, in fixing the fair value of the property upon which a return may be allowed.

The Master: I will take the witness's opinion of how I can get the value, whatever value it is, that the decisions require. As to all matters of law, of course I cannot take his opinion, but I am taking his opinion as to the method of arriving at the value. Now, if your question relates to a

40025 method of arriving at value I will take it.

Mr. Chambers: It does, only I want him to tell to what items the rule of depreciation should be applied.

Mr. Ransom: What is the purpose?

(Question read.)

Mr. Ransom: I object to it unless it is limited to some purpose. It is too vague and meaningless. Does it mean depreciation figured on some straight line method for return on value?

The Master: I will take it.

Mr. Ransom: Exception.

A. It should be applied to all items. Of course,

40026 there are one or two possible exceptions to that, that is, it is conceivable that certain piece of property might have a salvage value at a moment which was equal, and in the case of copper we have seen it exceed, the cost of the original copper, so that the salvage value of that copper has been at times in excess of the original cost. Of course there would be no depreciation upon that, but that is a matter which can only be determined when the property is actually removed, so that, generally speaking, there are very few exceptions, and one might say it should apply to all items.

Q. Does the labor cost in property depreciate?

A. It does.

Mr. Ransom: Not recently.

Q. How in your opinion should the amount of accrued depreciation be determined?

The Master: I think that is a matter of law.

Mr. Chambers: Mixed law and fact perhaps.

The Master: What do you mean by corrected depreciation?

The Witness: Well, the amount of depreciation which should be deducted in determining fair value from cost.

The Master: Well, you have already given me all the elements, haven't you? 40028

The Witness: I have given the elements of it, but the methods are different.

The Master: Well, I won't take that; I have all the elements from the witness that in his opinion enter into it.

Mr. Chambers: Exception.

Q. Mr. Maltbie, you recall, do you, that Tables 117 and 118 relate to assessments.

A. Yes.

Q. And those were apportioned to certain pieces of property in certain instances, a few were apportioned?

A. A few items on these tables were apportioned.

Q. Now, will you state to the Master the effect of taking the entire assessment without the apportionment? 40029

Mr. Ransom: I object to that.

The Master: What effect?

Q. Well, give the amount—

Mr. Ransom: I object to the question as incompetent.

Mr. Chambers: You said the other day that you did not believe that it was proper to apportion the assessments that were laid against a whole lot to a certain portion of that lot.

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The Master: Yes.

Mr. Chambers: Now, let us give the amount. I want him to give the amount without apportioning it at all, attaching the whole assessment to the particular piece, although it seems unfair to me, still I thought we ought to have it in the record, not apportioning it at all, letting the whole assessment be fixed to the particular portion that we claim should go into the rate base.

Mr. Ransom: Well, I want to object to this.

Mr. Chambers: It is not fair, but we will take the whole thing.

40031

Mr. Ransom: I want to object to this, and in that connection I want to bring out as to the exhibit which was received last night, that exhibit received last night was based on this apportionment of assessments by the witness in these tables which your Honor refused to permit him to make when he was on the witness stand and offered the particular tables on which this summary table was based.

Mr. Chambers: We have another question. That is something else.

The Master: What you want him to do is to—

Mr. Chambers: Put the whole amount against

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that.

The Master: So if I reach the conclusion that it ought all to be against it, you want him to save me the trouble of figuring that?

Mr. Chambers: Yes.

The Master: I will sustain the objection; I will do it myself.

Mr. Chambers: Well, you won't know the amount.

The Master: Why won't I?

Mr. Chambers: Because they are not in the record.

The Master: They are not?

Mr. Chambers: No.

Mr. Ransom: That has been brought out fully.

Mr. Chambers: No.

The Master: Well, it cannot do any harm. Answer the question.

Mr. Ransom: But your Honor refused to allow him to make the apportionment.

The Master: Well, now, he has corrected his figures on that theory.

Mr. Ransom: But he has made an exhibit based on the incorrect theory. 40034

The Master: I will admit the answer. What is the amount that ought to be?

The Witness: Well, I will give it parcel by parcel.

Mr. Ransom: Well, this is all over my exception.

The Master: Yes.

The Witness: In Block 986, Lot 1, Parcels 1 and 2 in the column, Table 117, entitled "Charged Real Estate Account 1884 to 1905," the total amount opposite Parcel 1 would be increased to $1,626.15, and the item opposite Parcel No. 2 would be decreased to $184.70. That 40035 is, one would be increased $21.12, and the other would be decreased $21.12. The point is that not all of the items were apportioned, there was only a part of it that was apportioned.

The Master: Next item.

The Witness: Block 1,457, Lot 6, Parcel 1, in the same column and same table would be increased to $5,059.43, an increase of $505.94, and Parcel 2 would be decreased to nothing, or a decrease of $505.94. In the column headed "Charged Improvements to Real Estate, 1909 to

1918," the item opposite Parcel 1 of $456.29 would be increased $50.70, or to $506.99. Block 1,157, the west 300 feet would be changed in the last column of Table 117, that is the item of $162.50 would be increased by $97.50, or to $250 even. Block 704, Lot 1, Parcel 1, in the column headed "Charged Real Estate Account 1884 to 1905," the amount of $2,158.85 would be eliminated entirely and the item opposite Block 1,704, Lot 5, Parcel 2, would be increased from $2,650.81 to $5,381.91. In the last column of
40037 Table 117 the item of $152.02 opposite Parcel 2 would be increased to $341.88, an increase of $189.86. Block 1,999, Lot 1, would be increased in the last column only from $1,701.00 to $4,507.37, or an increase of $2,806.37.

Block 3,236, Lot 1, would be increased in the last column from $11,094.31 to $33,282.94, or an increase of $22,188.63.

Now, as to all of the items with the exception of the last one, which I will treat in just a moment, under these figures, or in making these figures all of the assessments which were not definitely assignable to parts of the lot have been
40038 entirely charged to the parts noted here. In the case of Block 1,999, Lot 1, there were sold a considerable part of that block and the charging of the entire assessment has been done here against the 250 feet to the west. Of course, that leaves that with no charge against the profits which were made from the sale of that part to the east.

As to 3,236, one further explanation should be made. If all of the assessments against that

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entire part are charged against the parcel which Senator Boylan valued at $64,312, as I recall it, the amounts paid when the special assessment was made to the owners of this property should, of course, be deducted upon the same basis. These credits of items to the Consolidated Gas Company for the taking of certain land which is represented by the $33,000 plus as assessments amounted to $19,646.74, and if all of these are credited to the part against which we charge all of the assessments, which must be done to be logical, the net change in the cost of that parcel will be $5,686.33.

40040

The Master: In other words, you are trying to set up the award against the assessment?

The Witness: Yes, sir.

The Master: As to the balance which remained?

The Witness: Yes, sir. This is, your Honor, an attempt to determine the cost of the land, and the cost of the land is decreased by the amount of the award for property taken.

Mr. Ransom: What a distinguished man called "revision downward."

Q. Now, Table 118.

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A. Now, the changes which would be made in Table 118 as a result of the above figures in 1906, 1907, 1908, 1909 and 1910, there would be no changes whatever. The year 1911, will be increased by $2,857.07. I do not have this table before me, and I see that I have not got my figures in such shape that I can distribute that amount opposite the 3,236.

The Master: When you get it ready, let me know.

The Witness: I lumped them altogether and made the change at the end, but I haven't it year by year.

The Master: When you get it checked up, let me know.

Mr. Ransom: May I bring up just one matter with respect to this Exhibit AA-456?

Mr. Chambers: I would like to ask him a few questions.

The Master: Why don't you wait until Mr. Chambers gets through?

Mr. Ransom: He is not through?

Q. Did you direct the classification of land to be made in Tables 6 and 7?

40043 A. I did.

Q. Will you explain the basis of the division?

The Master: I think we have that already.

Mr. Chambers: I am afraid not.

The Master: Oh, yes, we have.

Mr. Chambers: There is only one question, and that is all.

The Master: What is it?

Mr. Chambers: I want him to explain the division of Table 6 and 7, and why did he separate Block 870 from the remainder.

The Master: I will rule it is sufficiently in evidence.

40044 Mr. Chambers: Exception.

The Master: Is that all now?

Mr. Chambers: I think that is all I have now.

Cross-examination by Mr. Ransom:

The Master: Now, what is it?

Mr. Ransom: I just want, in order to help check on this 466, I want him to explain.

Q. This figure of $1,653,809 which is here given as the total amount of the land in 1918, is not the assessed value of land which was put in by deputy tax commissioners called by the defendants, was it?

A. No, it is not the assessed value.

Q. It is something that you took out of the Yalden report?

A. It is something I took from Table 5.

Q. That was taken from the Yalden report?

A. It was made up in part from Senate Document 47.

Q. Meaning the Yalden report, and it is annexed to it?

A. In which the Yalden report is included.

Q. You have not even put the assessed values in this table?

A. I have not. 40046

Q. Do you know what the total assessed value proved by you would have made the land in 1918, or the assessed values proved in this case?

A. Well, I cannot give it to you from memory, but I have got it in a table. I have got it in my notes.

Q. I just want the method in which this is made up.

Mr. Chambers: We have offered that table.

Mr. Ransom: But they paid no attention to it after it is offered. And I think we ought to have use of or access to the working papers on which this witness's exhibits have been gotten up, particularly this generous exhibit just offered. 40047

The Master: I think so, too. I shall direct that that be done, in the interest of saving time for cross-examination, otherwise the cross-examination is apt to be interminable.

Mr. Ransom: It will be anyway.

The Master: Well, I hope not, but I want Mr. Maltbie to arrange with the representatives of Mr. Ransom to let them check up the working papers to see how he arrived at these various figures. Now, I want to say this, Mr. Chambers. When we get to summing up, I will expect you to have

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ready for me, so that you can point out quickly to me the places in the record, and the basis upon which the figures for 1918, are arrived at, so that I can see the points of difference between the claims of the complainant and the claims of the defendants, and just what you have done part of which Judge Ransom is now referring to. I had in mind, in thinking of the matter last night, I did not have this figure before me, I did not recall any items of mains and services, or just what figure was put on it, and I see it is put in here as "other fixed capital," and it may be that Judge
40049 Ransom will bring it out on cross-examination, but whether he does or not, I want you to be able to show me just how much you have allowed, for instance, for mains and services, and what you have done with it, and where it disagrees with the claims of the complainant in that regard as to the other items.

Mr. Chambers: Well, that is in the exhibits.

The Master: Well, I have not analyzed the exhibits; it may be in the exhibits.

Mr. Chambers: I am going to do that.

The Master: So that in the summing up I am going to have before me the claims of the com-
40050 plainant in the form that they have put them in, and I shall check up against that the claims made by the defendants, and the claims that you make as to what the record shows as to the cost of the production of gas and the distribution of gas, commercial expenses and other items, where you say you have proved that deductions should be made. And then when I get to the value of the plant, or whatever it is called, I want to see precisely what land you have omitted, why you have omitted it, what you have allowed for mains and services and distribution and other items, so

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that I will have a complete picture of it when the talk is finished.

Mr. Chambers: I will say that I will try to do that, within the limitations of my ability and my shortcomings.

The Master: Judge Ransom is able to familiarize himself with this branch of the case so he can show me what he has done with reference to cost of production. What I have got in my mind particularly is this, that the complainant company says it takes so much money to make gas in 1918, and you say it costs less, and I want you to tell me just where the items are that you claim re- 40052
duce the cost of production. Now, when will you be ready to cross-examine Mr. Maltbie, Monday morning?

Mr. Ransom: I do not know. Some time next week or the week following.

The Master: Well, is this intended to be humorous?

Mr. Ransom: No, it is literal. I do not see how we can finish, with what has taken place in the last three days, I do not see how we can finish the defendants' case in three weeks.

The Master: All right, then we won't be finished for several months.

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Mr. Ransom: Well, that may be, but it is no fault of mine.

The Master: There is nothing else for Mr. Maltbie today?

Mr. Chambers: Can I speak to him for just a minute?

The Master: Yes.

Mr. Chambers (after consultation): That is all.

The Master: Now, Mr. Maltbie—who do you want Mr. Maltbie to discuss the question of the

40054 Willard F. Hine, Cross.

accessibility of his records? Who is going to attend to that, Mr. Vilas, or Mr. Goetz, or someone else?

Mr. Ransom: Mr. Armstrong and Mr. Mirich.

The Master: You will meet at twelve o'clock at Mr. Maltbie's office?

Willard F. Hine recalled.

40055 Cross-examination by Mr. Ransom:

Q. During the period of your connection with the Commission, you became acquainted with what was called the fixed capital account under the uniform system of accounts?

A. The fixed capital account defined by the Commission?

Q. Yes.

A. Yes, I became familiar with their accounting order.

Q. You don't mean that this is an adjusted book cost of the capital comprised within the fixed capital

40056 account of this company?

A. No, this does not cover land and certain buildings.

Q. You have left out of it many things included in the fixed capital of the company?

A. All that I can think of are land and these special buildings, and an account that is carried on the balance sheet called franchises and rights, I believe.

Q. Carried on the balance sheet? Is it carried in a special and specific account?

A. Carried in that account, yes.

Q. In the balance sheet?

Q. Well, it shows in that form.

Q. Shows in the balance sheet the same as any other capital account?

A. Yes.

Q. Now, from this table, revised and lowered book cost, 1905 to 1918, Table 275—

Mr. Chambers: There isn't any such table.

Q. (Continuing.) You have excluded such properties as the manufacturing plant at 14th Street and 42nd Street altogether?

Mr. Chambers: Just a minute. I have to object because there isn't any such table. If you 40058
speak of it as table so and so. There is no such table as he has designated.

Q. Well, from Table 275, you have excluded such properties as the manufacturing plant at 14th and 42nd Streets altogether?

A. Yes.

Q. In spite of the fact that they are producing many millions of cubic feet of gas a day during this winter?

A. I have excluded them.

Mr. Chambers: I object to that. There isn't any evidence of that.

Q. What other properties have you excluded from 40059
your Table 275 in reaching what you call an adjusted book cost of fixed capital?

A. Well, I think that would show up from the special tables from which this is taken. This is built up from other tables in evidence.

Q. Well, what have you omitted at 18th Street?

A. At 18th Street?

Q. This Table 256.

A. The items as shown on Exhibit AA-415, Table 257, as of January 1, 1906, plus all the additions from 1906, on until the time that these various properties

were not used for gas purposes, as from the testimony of Mr. Alrich.

Q. Well, Table 257 shows what you have included. What have you omitted?

A. I have omitted all of the other items shown on the books of the company at that time because of the fact that the books—

Q. (Interrupting.) I did not ask you because. What have you omitted? What items have you omitted that you found on the books of the company?

A. I did not take an analysis of those items on

40061 the books of the company.

Q. You cannot give any indication to this Court what you have omitted?

A. I can give an indication, yes. I have attempted to omit the entire manufacturing plant and holders and so forth that were taken over by the City in—I have forgotten the day they were taken by the City.

Q. What date?

The Master: At what place?

The Witness: West 18th Street.

Q. What date?

A. It was taken by the City?

Q. Yes.

40062 A. I do not remember. Prior to 1906.

Q. Is that all?

A. That is all I have attempted to eliminate, with the exception of some of those buildings, parts of that manufacturing plant, that were left as a part of the purifier house and other things that were left on this property, and I have included those at the assessed value as shown on Table 257, Exhibit AA-415.

Q. Well, can you give the amount in money of book cost shown by the books with respect to 18th Street that you decided to omit?

A. Taking the balance at the 18th Street station, as shown by Exhibit AA-248, as of January 1, 1906, of $2,347,000—

Q. (Interrupting.) Was that table prepared by you?

A. No.

Q. You did not examine the books to find out whether it was correct or not, did you?

A. No. I have figured—taking that figure of $2,347,157.30 and deducting from it the amounts which I show on Exhibit AA-415 of $447,337.17—

Q. (Interrupting.) That is table what? 40064

A. Table 257. I found that the $1,899,820.13.

The Master: That you did not include?

The Witness: That I did not include, which was shown on the books as of that date, if this exhibit is correct.

Q. Well, do you know how much of that figure represents the value of the 18th Street plant, or cost of the 18th Street plant?

A. Of what figure?

Q. This $1,899,000?

A. Well, if this figure as shown by Exhibit AA-248 is correct, as the balance charged against that plant at that date, why, the $1,899,000 plus would represent 40065 the value of, or the book cost of all of the property that I have not included in 257.

Q. But you don't know anything about whether that table is correct, or what the figure given by that table includes or excludes, personally? A. No.

Q. Now, this Table 257 you call adjusted book cost of the 18th Street station?

A. Yes, sir.

Q. Will you call the attention of the Court to a single item on Table 257 which does appear in the books of the company in those figures there given?

A. Yes, the last figures appear in the books of the company.

Q. The figure for Lot 14, Block 716, plant, $11,000, which you took from your Table 67, Exhibit AA-241, that is the only one out of over fifteen items?

Mr. Chambers: No, he said all of the $132,915 appears in the book.

A. They appear in the book in that they are, as I understand it, the Senate Document 47 shows the details from which the opening entries of the books were made up, and, therefore, these figures are incorporated
40067 in the opening entry, which was distributed on the books.

Q. Well, where in the books can you find the first figure, $50,000?

A. You cannot.

Mr. Chambers: He spoke of that yesterday.

Q. Where in the books can you find the figures $132,915?

A. You cannot on the company's books.

Mr. Chambers: He said the items appeared, but in the sum total.

Q. Where, in the books, can you find any of the items of $52,000, $60,000, $800, and the others making
40068 up the $132,000?

A. They do not appear on the books as these figures.

The Master: I understood him to say yesterday those items did, making up the $132,000.

The Witness: Well, I say they appear in the books in this way, that the opening entry—

The Master: Oh, I understand what you say now, but you misled me yesterday.

Q. Where, on the books, can you find this figure of $114,395 for Lot 11, Block 691?

A. Those figures cannot be found on the books as those figures.

Q. Where can you find any of the details making up that sum which you have set forth on this sheet?

A. Senate Document 47.

Q. Not on the books?

A. No.

Q. What figure did you find on the books for Lot 51, Block 715, and of which you give no amount at all here?

A. I do not think you can find any figure on the books.

Q. Did you look to see?

A. I have looked to see. 40070

Q. Where on the books do you find the item of $138,137?

A. You cannot.

Q. Where, on the books, can you find the details of the five items, the details which you have undertaken to set up here?

A. You cannot, as such figures.

Q. With respect to Exhibit AA-241, Table 67, the item of $11,000, did you read the cross-examination with respect to that table?

A. Yes, sir.

Q. Are you willing to say now that that figure appears in the books? 40071

A. Yes.

Q. In that sum?

A. I think it does. That entry appears in the books and shows that figure in the entry, and the entry is in the books.

Q. When was that acquired, according to your records?

A. What?

Q. This last property.

The Master: The $11,000 odd item.

A. When was the plant acquired?

Q. When was the property acquired, the property in the item that is covered by this $11,870.19 which you say appears in the books?

A. I do not know when it was acquired.

Q. You have not any idea?

A. No.

Q. Where does it appear in the books?

A. According to Table 67, on Exhibit AA-241 at Journal Entry 1,081, I believe, page 441, of November 16th.

Q. In other words, you say that a figure showing
40073 the book cost of this property as of January 1, 1906, you found only in a journal entry in 1916?

A. Yes.

The Master: I do not understand that at all.

The Witness: Why, in 1916, when the credit was made on account of the—

The Master: Yes, I remember; you said it yesterday.

The Witness: Yes.

The Master: You assume that because there was a credit in the journal entry in 1916, that was a back charge that ought to be there in 1906?

The Witness: Yes.

40074 The Master: Yes, I remember.

The Witness: I assume the correctness of the entry there.

Q. Did you take all the credits in connection with the cost of property?

A. No.

Q. And put them in here as your index of cost?

A. No, I explained I could not do that with some of them, because I did not have the information.

Q. As to those where you had the information, did you in every instance do that?

A. Where I thought that the information was applicable I used the retirement figure.

The Master: Which items are they? Which items did you do that with?

The Witness: There are no others on this West 18th Street, just that one.

Q. What about 21st Street? What items on 21st Street did you do that with? That is your Table 258, Exhibit AA-416.

A. I worked from the balance of—

By the Master:

Q. No. You were asked a question. What items 40076
on that schedule did you put on there in the same way that you put the $11,000 on the previous one?

A. I had no adjustment there, it is a different character of proposition.

Q. There is nothing there that you did the same way?

A. No, nothing that I did the same way.

Q. Is there any schedule as to any plant that you did the same with as you did with this $11,000 odd item?

A. Yes, on Table 259 in building up the figure for the plant on property sold to Consolidated Telegraph & Electrical Subway Company, I there used some 40077
book retirements.

By Mr. Ransom:

Q. Any others? I assume when you say building up you really meant building down?

A. I did not. In Table 262, for the office building on the property sold to the Standard Gas Light Company, I took that at the amount of the credits made by the company. The same with the brick fence.

Q. The brick fence on the 111th Street property?

A. On that main property, yes, stable contents, and smithshop floor, the boiler stack, the portion of old generator house retained.

Q. That is, on the five items on Table 262 you did it?

A. Yes.

Q. How about the next?

A. Well, those are on account of charges. They do not represent the same thing; they have not been removed, they are still there. Of course, that could only be done in the case of property that has been removed since December 31st, 1918, or has been credited on the books of the company.

Q. Since December 31st, 1918?

40079 A. Before December 31st, 1918.

Q. With what other tables did you do this same thing?

A. I believe those are the only instances. But just one moment. Well, it occurs on Table 263 in connection with one of the boilers, one boiler retired, and I took that out at the figure shown for the retirement, which corresponded also with the amount at which that boiler was in on Senate Document 47.

Q. The Table 258, which you called adjusted book cost, is there any item on that table which you take from credit entries in the books?

The Master: What station?

Mr. Ransom: 21st Street station.

40080 A. No. Well, you might say that those tanks and holders, they could be found. I did not take them from credit entries.

Q. They could be found?

A. They could be found on credit entries—tanks and holders and foundations and damages.

Q. Does this item of $3,457,796.59 as an adjusted book cost correspond with the book figure or differ from it?

A. Well, I do not believe that the books have a separation of each plant. It corresponds with the

figures shown in Exhibit AA-248, except for the deduction of that tank and holder, foundations and damages, in connection with that holder which had been destroyed several years before that time. They were included in Exhibit AA-248 under the 21st Street station, and I have therefore deducted them from the total shown on that schedule for the 21st Street station.

Q. Do you know what the book figure is for this plant, this station?

A. January 1st, 1906?

Q. Yes. 40082

A. No, it was not subdivided on the books.

Q. You say that an accountant could not subdivide it?

A. No, I don't. I understand it has been subdivided.

Q. Why, yes.

A. That corresponds, this $3,667,648.09, with a figure which was arrived at by the witness Teele in certain schedules.

Q. Certainly not in Exhibit AA-248?

A. He did not make up Exhibit AA-248. It would have to be worked back from the subdivisions that were made later. I do not know how they were made 40083 up.

Q. Do you know what you omitted from the 21st Street station, from the fixed capital of this company, as applicable to that station?

A. I do not think I have omitted anything. I have taken the balance as shown by a certain exhibit and eliminated only the charges in connection with that tank and holder which fell down or which disappeared years before that—from that balance. The credits were made about three years after 1906.

Q. Do you mean the tank and holder which collapsed during construction?

A. Yes, naturally it was not there and that is the only adjustment I made.

Q. You do not know anything about the correctness of Exhibit AA-248, do you?

A. I do not, except that the checks—except in one instance, I believe, as to the figures that were gotten up by Mr. Teele.

Q. What was that one instance?

A. I do not remember now; a very small item.

40085 Q. What do you call a small item?

A. It was some $800, I believe, possibly.

Q. Do you know what it was for?

A. No, I don't remember. I did; I checked the total.

Q. Why did you leave it out of here?

A. Leave what out?

Q. That item?

A. 21st Street?

Q. No, that $800 or $800,000 or whatever it was?

A. I have worked from this exhibit, assuming the correctness of this exhibit. I started with the balance shown by Exhibit AA-248.

40086 Q. You have read the cross-examination with respect to that exhibit, have you not? A. I do not know.

Q. And you did not make any corrections in the light of what was developed on cross-examination with respect to the book entry?

A. No corrections with respect to that.

Q. With respect to Table 259 can you state how this figure that you call adjusted book cost corresponds with the books or differs from the books?

A. The books do not show a subdivision by stations on January 1, 1906.

Q. An accountant would have no trouble working it out. He could work it out?

A. I think he would have trouble. He could work it out, of course.

Q. Have you any idea how that does correspond with the books? Have you any personal knowledge?

A. That I believe would be the figure that an accountant or anybody would arrive at for the 41st Street stable, eliminating everything else at 42nd Street, the manufacturing plant.

Mr. Ransom: I move to strike out the answer as not responsive. 40088

The Master: Yes, I will strike it out.

Q. Have you any personal knowledge—

The Master: What station is that intended to be?

Mr. Ransom: That is the 42nd Street station.

The Witness: 42nd Street.

The Master: He is talking about the 42nd Street station now, not about the 41st Street stable.

Q. Have you any personal knowledge as to what the differences are between your figure of what you call adjusted book cost, January 1, 1906, and what the books show was the book cost of that property? 40089

The Master: For that station.

A. Only as shown, or as I could arrive at it, by the examination of Exhibit AA-248, which shows a balance at the beginning of the year 1906, for the plant account of that station of $1,501,055.01.

Q. And your adjusted book cost is $8,470 as compared with that?

A. Yes, sir.

By the Master:

Q. Your adjustments consist in throwing things out?

A. Not all of them, no. In that case I have excluded the 42nd Street plant altogether.

Q. When I say "throwing out" I mean excluding.

Mr. Chambers: No, not in all instances.

A. I had to arrive at a figure sometimes, because of the fact that the books do not show anything about the property.

Q. But most of the differences to which Judge Ransom referred are due to the fact that you have excluded items?

A. Yes, certainly.

Q. And that is what you call adjustments?

A. Yes.

40091 Mr. Chambers: You do not want anything like that 21st Street Tank and Holder that blew up, or fell down, while being constructed?

Mr. Ransom: These earlier tables contain a lot of omissions which we have shown, aside from any exclusion of property. He goes ahead out of his lack of knowledge of what the books show, ignores the cross-examination and assumes the correctness of the tables and omits them all.

Mr. Chambers: I object to that.

The Master: I know your argument.

Mr. Chambers: You carried on your books thousands of dollars long after you ceased to use

40092 the property—carried them right along as capital. Somebody had to take them out.

By Mr. Ransom:

Q. On your Table 260 you show what you call the Adjusted Book Cost of the 63rd Street Station. The principal item there is the item of $357,826.39. Why did you take that from the P. S. C. Reports instead of from the books?

A. I did not, as I testified when that was put in. I stated that that refers to the P. S. C. Reports only with regard to the date of erection of that holder. The amount is $357,826.39 and is made up as shown by the figures below, which add up to that total.

Q. How much does that total vary from the book figures?

A. About $220,000, roughly.

Q. Consisting of what?

A. It consists of certain properties which were included in Senate Document 47, the list of the property in 1884, and it never has been written off, and which, according to the testimony, were not there in 1906.

Q. According to whose testimony?

A. The testimony of Mr. Alrich. It is not used as gas operating property anywhere. I do not know as 40094
to whether they were there.

Q. You say you excluded them because you think Mr. Alrich testified they were not there and used at that time?

A. He testified to what was there and I did not see those things covered.

Q. What do you mean, what particular items of property?

A. I will have to have Senate Document 47. (Takes book.) In Senate Document 47, pages 851 to 854, the list of various items of property, 62nd and 63rd Street.

Q. What kind of property?

A. There is a frame dwelling house, another one a 40095
stable building, two gas-holder tanks, two telescopic gas holders; a valve house, various piping, furniture, engine room, basement boiler room, pump and stairway exhauster, compensator and various miscellaneous items, a photometer, gauges, piping.

Q. Are you reading from the Rowland Appraisal?

A. Yes.

Q. What is the total of those items shown in the Rowland Appraisal?

40096 Willard F. Hine, Cross.

A. $164,525. That is from the so-called Rowland Appraisal. I do not know whether Rowland appraised that or not.

Q. How do you get this item of two hundred and some odd thousand dollars that you omitted?

A. I don't. I just included those things I show there, those charges on account of that holder. It is principally with respect to that.

Q. I understand what you have done in making up this adjusted book cost as to the 63rd Street Station, every item and detail of property that you did not find
40097 specifically mentioned in the testimony of the witness Ulrich you assumed was no longer there.

A. No, sir.

Q. What then did you do?

A. I assumed that, seeing none of that stuff could be found there in 1906, according to the witness Ulrich, it must have been put up at some other time—that all the property was put up at some other time.

Q. Where did the witness Ulrich testify that that $164,000 worth of property testified to by Mr. Rowland was not there?

A. He did not. He testified in 1906, as I remember his testimony, there was a boiler house and holder
40098 there at that station, and that was all that was used and useful for gas purposes; and I have taken the charges in 1888 and 1903 in connection with that station. The only thing I have left out has been the debits of $17,548.92 in 1905, which were charges for rearranging apparatus and the tank and holder; and the tank and holder which were not included in the above are the tank and holder that were billed to the Standard Gas Light Company in 1907, and there was a credit on account of rearranging apparatus in 1909.

Q. Well, that was the work that was done at that time?

A. In connection with the Standard holder, as I understood.

Q. You do not know whether there was at that time on this property and still used and useful in 1906 all of these various details of equipment and apparatus set forth in this Rowland appraisal for this property on pages 851 to 854, do you?

A. I know that according to the testimony it was not in use by the company.

Q. What you mean by the testimony is that Mr. 40100
Alrich mentioned a building and a holder?

A. He said there was one holder there only.

Q. Yes, and one building.

A. And he gave the size of the holder, and it was not those holders. He said there was a small pumping station there—or I mean a small boiler house and other things.

Mr. Chambers: Do you want to repudiate Mr. Alrich's testimony—you have such a good memory?

Q. Therefore, you concluded that you would leave out all of this apparatus shown here, the vaults and the pipes and the pulleys and the pressure gauges, 40101
the valve stands and the compensatories and the patent exhausters and the reel and hose, clay pipe, fire protection apparatus, Woodward pump, furniture—all of these other things?

Mr. Chambers: Yes, we want to because Mr. Rowland left them out. He said they were not there.

Mr. Ransom: Mr. Aldrich did not say they were not there.

Mr. Chambers: He said what was there, and anybody can deduct that if he said what was there it shows what was not.

Mr. Ransom: I want to get the witness's method.

Mr. Chambers: You could say who is in this room and that would also show that Charles E. Hughes is not here.

A. No, I left those out.

Q. That is, you assumed that every detail of apparatus and equipment which was still there had been specifically mentioned by Mr. Ulrich?

A. No, it was not. I knew it was not, but I assumed that the boiler house and the apparatus for
40103 that holder that was there in 1906 was erected at the time that that holder was erected and was included in the charges made from 1888 to 1903.

Q. And you did not have any knowledge whatever as to how much of this apparatus and equipment was still there in connection with the properties which were there?

A. No, but I know that it has been removed since of my own personal knowledge, and that credits have not been made for it.

Q. Since when?

A. Since 1906 some time.

Q. How recently?

40104 A. I cannot say when. I know that it is not there, though, and that no credits have been made on the books for it.

Q. I still do not see why or what basis you had for not including them in making up an adjusted book cost as of January 1st, 1906.

A. I think I have stated it fully.

Q. Well, Table 261, Adjusted Book Cost 65th Street station as of January 1st, 1906, do you know what you omitted there?

A. I omitted everything charged against that station with the exception of the items put down.

Q. How much is that?

Mr. Chambers: Do you mean how much is charged or how much was omitted?

The Master: No, how much was omitted.

A. According to the Exhibit AA-248 the balance January 1st, 1906, 65th Street station, on account of plant, was $1,180,271.01. I include $759,005.49, which means that I have omitted $421,265.61, and I wish to call attention to the fact that my balance December 31st, 1918, as per Exhibit 422, for this station, is $822,548, without giving the cents, while the balance as given on a statement prepared by Mr. 40106
Teele and furnished to the defendants shows a balance on account of that station as of December 31st, 1918, of $817,105. That figure I gave of $822,548 was of 1918; I may have misspoke myself and said 1908.

The Master: What has that got to do with 1906? I will strike out everything that he said about December 31, 1918, as not responsive to the question.

Mr. Chambers: Why not have it in? Mr. Teele has shown more than he has.

The Master: Mr. Teele has shown a little less than he has. 40107

Mr. Chambers: No, he has more. He has $822,000.

The Master: That is December 31, 1918.

Mr. Chambers: Yes, Mr. Teele has the most as I understood it.

The Master: Mr. Teele had $817,000 and you had $822,000 for December 31, 1918; is that right?

The Witness: Yes.

Mr. Chambers: Excuse me, I thought he said compared with this figure of $759,005.49 it would be more.

The Master: No, Mr. Hine just wanted to illustrate that the figure was fair.

Mr. Ransom: Showing that figure eventually became near right.

Q. Mr. Hine, you said a few moments ago that this property at the 63rd Street station which was comprised on these many pages of the Rowland Report but which you eliminated in reaching an adjusted book cost as of January 1, 1906, had never been retired and written off on the books of the company. Did you examine the books of the com-
40109 pany to see whether these were not retired in 1907—1906 and 1907?

A. No, I did not make an examination of the books in that connection.

Q. Didn't you find in the testimony of the witness Mrich that those properties were used and useful down to 1907—1906 and 1907, at which time they were written off?

A. No, I did not.

Q. You said you checked somewhat with this Plant Account for the 63rd Street station, which was furnished to the defendants some time ago. Didn't you find as to these items of property which you said
40110 never had been written off, that they were written off in 1906 and 1907, at which time Mr. Alrich said they ceased to be used—property comprised in these pages of the Rowland Appraisal to which you directed attention (handing witness)?

A. I see that some of them were; whether as to all of them, I do not know.

Q. And did you examine either the journal entries or the papers on the retirement to see whether or not substantially all of them were not retired at that time and that they had been used up to that time?

A. No. I see substantially all of those special items were.

Q. And yet you omitted them as of January 1, 1906?

A. I did.

Q. 111th Street station, your Table 262, do you know how much your figure of Adjusted Book Cost varies from the book figure?

A. The book figure is shown by Exhibit AA-248.

Q. You do not know anything about the correctness of that?

Mr. Chambers: No, he said he assumed it was correct.

A. No, I do not believe that is on the books—any 40112
subdivision of this description by stations.

Q. How much do you say you have omitted from the book figure?

A. Well, I cannot say that.

Q. You have not any idea?

A. I have not taken that book figure. I have taken as the book figure the balance at January 1, 1916, as shown by Defendants' Exhibit AA-248.

Q. And how much have you omitted?

A. I get $367,017.72 difference between my figure and the figures shown for January 1, 1906, by Defendants' Exhibit AA-248.

Q. Your figure is, of course, lower? 40113

A. It is lower, yes.

Q. By that amount?

A. Yes.

Q. You say that the book cost and the items of debit and credit making it up do not appear on the books by stations. Haven't you in your Tables 265 and 266 undertaken to give the additions and retirements of plant, the debits and credits by stations for the various years?

A. Oh, I misspoke myself then. I said that I did not believe that the balances occurred on the books,

showing the balance charged to each of these stations at the beginning and at the end of any period of time. I could not find a distribution on the books of the first charge in 1884.

Q. Can't you take the sums and get the amount at any date?

A. Yes, you can get the additions from 1884 and the deductions from 1884 on, but I do not know where from the books you will get a subdivision of the plants by the original figure.

Q. As a matter of fact, you did not examine to

40115 see?

A. Yes, I did.

Q. If you could not do that, how could you make up and venture to swear to the correctness of what you call Adjusted Book Additions and Adjusted Book Retirements of Plant?

A. Because we could check the additions against the total additions each year. The additions are set forth as to the plant they apply to and can be separated out in that fashion.

Q. And the retirements likewise?

A. The retirements likewise, but the original figure that is put on the books is not subdivided as to sta-

40116 tions on the books.

Q. How does this Exhibit 248 derive those?

A. Exhibit AA-248?

Q. Yes.

A. I do not know, except as he has informed me how they have been derived.

Q. Yes. An accountant did it and you did not?

A. I could, but did not.

Q. Oh, you could but did not?

A. I did not. I took the figures as shown by this exhibit.

Q. Take your Book Cost, as you call it, of the 41st Street station. Which of those items, fifty or more in number, appear on the books in those amounts? The first one?

A. None of those items appear on the books. No, the last five items appear on the books.

Q. That is, they are taken from Mr. Teele's exhibits, you say?

A. They are Mr. Teele's Exhibit 185.

Q. And the other fourteen, or thereabouts, you either estimated outright, or you undertook to make some apportionment of what you found in the Yalden Report or the Rowland Appraisal? 40118

Mr. Chambers: He just estimated one.

A. I estimated one and the others I took from Senate Document No. 47, which was the so-called Rowland Appraisal.

Q. In the precise figures?

A. With the exception of one item where I have taken one-half and noted it thereon.

Q. You estimated the storage house?

Mr. Chambers: He said that.

A. I estimated one item, yes.

Q. And you estimated a half on the brick wall?

A. Yes. 40119

Q. And you say you found each of these other items, aside from the last five, in the Rowland report at those specific figures so that you could identify them?

A. Well, now, with the exception of that boiler item. The boiler item in Senate Document 47 shows two boilers at $1,750, and Exhibit 367, page 11, shows that one of those was removed and, therefore, that is taken out here. So it leaves $875 against the boiler That is, on December 31, 1914, only one of those boilers remained and the other one had been retired.

Q. How much does your adjusted book cost as of December 31, 1914, of which five items are taken from the books and the other fifteen or thereabouts taken from sources which you have indicated—how much does your figure vary from the book figure?

A. The book figure is shown on Exhibit 248 and it varies by $1,204,129.25 as compared with an adjustment which is shown in certain of Mr. Teele's schedules which were furnished to the defendants of $1,290,412.67.

Q. That is as of what date?

40121 A. Well, it was the time that that station was taken by the City. I have just applied this at the end of the year; it would be the same at any date. December 31, 1914, Mr. Teele's schedule shows $2,004,996.31, I believe.

By the Master:

Q. What station is that?

A. 44th Street.

Q. As of what year?

A. December 31, 1914.

Mr. Ransom: These summary tables show that very quickly, as of any year.

Q. What date was it?

40122 A. December 31, 1914.

Q. How much do you say?

A. I think it shows $2,004,996.31. That is the schedule I was referring to, the one that the Master had.

Mr. Goetz: That is not the Teele exhibit.

The Witness: No, I did not say it was the Teele exhibit. The Teele exhibits do not give any figure.

Q. But this schedule Judge Ransom referred to before, this detailed statement of the company's manufacturing plant and holder stations to and in-

cluding December 31, 1918, to which you had access for some time?

A. Yes.

Q. You say that shows what on December 31, 1914?

A. Well, I think it was, $2,004,996.31. I cannot just read this figure.

Q. That is right.

A. Then another schedule that was furnished at the same time shows there should be a deduction on account of that property taken by the City of a certain amount. 40124

By Mr. Ransom:

Q. But not as of December 31, 1914?

A. No, but at the time that was taken by the City. Certainly it was before December 31, 1914.

Mr. Chambers: How much was that?

The Witness: I do not remember what is—well, yes, his deduction was $1,290,412.67.

Q. But even that deduction would not give your figure?

A. No, it would not give my figure. It would give a lesser figure.

Mr. Chambers: A little less.

The Witness: He has deducted more than I have. 40125

Q. But not as of December 31, 1914?

A. Oh, I just made the adjustment then. The retirement was before that time.

Mr. Chambers: We did not whittle you all away.

Q. That is, you have whittled away on these earlier years?

A. No, I did not; I whittled away later. I took nothing off of the earlier years.

Mr. Chambers: The trouble is that Mr. Teele copied everything right off the books. I do not see that he did anything except to take book figures.

The Master: That is all he assumed to do, was to tabulate the books.

Mr. Chambers: He said you could not find a mistake, and of course you could not; all you could find was a mistake in copying off the books.

The Master: Mr. Teele's tabulations were only tabulations from the books.

40127 Mr. Ransom: Yes.

Mr. Chambers: We are challenging the books.

The Master: No, you are not challenging the books, you are challenging the fact that they should not have retired some of this property.

Mr. Chambers: Yes, I am calling attention really to the fact that as nearly as I can make out Mr. Teele took figures right off the books, and the only mistake you could find would be where he made mistakes in transcribing.

Mr. Ransom: But they mark off these properties and say they should have been retired at earlier dates; and it is noticeable that in none of
40128 their statements of operating expenses and renewals and replacements and retirements do they make provision for that.

Mr. Chambers: The Master is going to be confronted also with the fact that there is nobody has audited these books and said they were correct up to the present minute.

Q. Mr. Hine, is your table of what you call accrued depreciation 1905 to 1918, Table 272, Exhibit AA-425—is that a computation of entries appearing upon the books of the complainant company?

A. A computation of entries?

Q. Yes.

A. It is not; that is my computation.

Q. Is it a representation of the physical condition of the properties to which you have ascribed what you call depreciation?

A. No.

Q. You do not mean to suggest that the properties cost the company this $6,000,000 less than the figures shown by you, do you?

A. Not by that table, no.

Q. You do not mean to suggest that the investment of the company in these properties as of December 31, 1918, was $6,507,400 less than it otherwise would be? 40130

A. Well, now, that is different when you come to the investment. You would have to take into account the policy of the company in building up the property out of their reserves. I have not made a study of that phase of the subject so I could not speak on that. Taking, however, the cost of the property, not the investment—the book cost of the property as I believe it should be taken, and depreciating that in the manner that I believe it should be depreciated.

Q. Is not the book cost the investment? 40131

A. I do not think they are synonymous by any means; certainly not.

Q. What distinction would you draw between book cost and investment?

A. Well, I would say that the investment was the money that they had put in, the book cost of a property would be the cost shown by the books, and not necessarily, even, the cost of the property that they had there.

By the Master:

Q. Your distinction is that part of this expense might have come out of profits?

A. No, not exactly out of profits, but it might have come out of the reserves taken in from operation.

Q. I mean out of reserves.

A. Certainly.

Q. You say the money taken out of reserves is not additional investment?

A. That is my idea.

By Mr. Ransom:

Q. Even if used for purposes of replacing property?

401.33 A. If it came in that way it would be the reserve. You would have to take that whole matter into consideration.

Q. If you had no books of the Consolidated Company showing the Fixed Capital Account credits and debits, would you have used the same figures in computing what you have called depreciation?

A. I could not have.

Q. And you would not have?

A. I certainly would not if I could not. If I did not have the figures I could not have used them.

Q. If you did not have any books showing the Fixed Capital Account credits and debits, you would

401.34 not have arrived at this total of $6,507,400?

A. I did not say that.

Q. Would you have?

A. I don't know. I could not have used those figures if I did not have them, though.

Q. Have you personally by an inspection identified separately the older and the newer portions of the engine exhauster house at 21st Street and Avenue A?

A. I have not.

Q. Could you in any way describe what portions were new and which portions were old?

A. No.

Q. Have you in any way distinguished by personal inspection or otherwise between the older water gas machines at the 21st Street station and the newer ones?

A. No.

Q. Then your estimate of Accrued Depreciation is based upon the Credits and Debits in the Fixed Capital Account of the complainant company, excluding items for property claimed by you to be unnecessary in the gas business?

A. Yes.

Q. Assuming that the complainant company in one job or operation reconstructed a portion of its apparatus at a certain station at a cost equal to 50 per cent of the original cost of the apparatus, and the reconstruction cost was not charged in the Plant Account, would you still apply to the original cost of the apparatus as shown in the Fixed Capital Account the rate of depreciation just as you would have applied it if the reconstruction had not been done and the large expenditure had not been made for such purpose? 40136

A. I know that a great many reconstruction—

Q. Answer the question, will you?

Mr. Chambers: He is going to. That is an involved question.

A. Repeat that question again. 40137

Mr. Chambers: It is a long and tedious question.

Mr. Ransom: I will admit that the Attorney General's mind could not follow it.

Q. Will you answer the question?

A. If you will read it to me so I will get it.

The Master: Read the question.

Q. Assuming that the complainant company in one job or operation reconstructed a portion of its apparatus at a certain station at a cost equal to 50

per cent of the original cost of the apparatus, and the reconstruction cost was not charged in the Plant Account, would you still apply to the original cost of the apparatus as shown in the Fixed Capital Account the rate of depreciation just as you would have applied it if the reconstruction had not been done and the large expenditure had not been made for such purpose. Answer yes or no.

A. That absolutely cannot be answered that way.

Q. You either would or you would not.

A. You cannot answer that question yes or no with
40139 any fairness to anybody.

The Master: Give him the concrete case; point to the case and ask him what he did.

Q. Five water gas machines at the 21st Street station, costing originally $122,946.06, were reconstructed in 1907 and 1908 at a cost of $57,189.60.

The Master: As appears by the books.

Q. (Continued.) As appears by the books and as has been previously testified.

A. What is the amount?

Q. $57,189.60, which it has been testified to previously in this case was not charged to the Fixed Capital Account. What rate of depreciation would
40140 you apply to the item of $122,946.06 shown in the Fixed Capital Account as the original cost of these machines?

A. In order to make that clear I have got to restate what I did before, that I have not taken each kind and character of apparatus in determining this, but have applied it to an entire plant, in connection with manufacturing plants complete.

Q. Just answer the question.

A. That is just what I am doing.

Q. What did you do with respect to these five machines?

A. I am telling you.

Q. What rate of depreciation did you apply to them?

A. I am trying to tell you.

Q. What is your figure?

A. Just for those machines?

Q. Yes, what did you figure those machines?

A. I am trying to tell you that. I did not take those machines separately.

Q. Did you apply any rate to them?

A. I applied a rate to the 21st Street plant in its entirety. 40142

Q. That is, to everything in the plant?

A. To everything in the plant, and I estimated a certain age for that plant and bore in mind that they spent a very considerable amount of money in doing repair work. Otherwise that age that I used for the plant would have been lower.

Q. What age did you assume for these five machines?

A. I did not take any machines separately; I took the dollars spent each year as the criterion.

Q. What rate did you take for all the water gas machines there?

A. I did not take water gas machines separately; I took plants. 40143

Q. What ought to have been the rate? Supposing you were to depreciate all the water gas machines separately, what rate would you apply?

A. That would be another proposition. I have not studied those in detail.

Q. Have you any idea?

A. Yes, I have an idea. It would vary with th plants, vary with the repair policy of the company, and it would vary with the way they used the machines, in every case. If a company does not keep

up repairs the machines will last a much shorter time.

Q. Has not the company kept up the repairs on these five water machines?

A. I would say that the company, generally speaking, keeps its apparatus in very good repair.

The Master: Was this charged as a repair item?

Mr. Ransom: Extraordinary repairs.

The Master: And not into plant account?

Mr. Ransom: Not into plant account.

40145 Mr. Chambers: It is a pretty heavy expense there, near half the original cost.

The Master: It did not cost the consumer any more for his gas, did it? He was paying 80 cents.

Mr. Chambers: Well, I cannot say that myself. The rate should have been lower than 80 that year 1886.

Q. What did you do with respect to these five machines?

A. I did not handle those machines separately.

Q. You did not take them into account at all?

A. I did.

40146 Q. Except as part of a whole plant?

A. As a part of the expenditures which were made when the expenditures were made, and charged to plant account. I did not take into account in this calculation the dollars charged to repair account, except as I have stated generally that I did bear in mind the fact that they had made considerable major repairs to their apparatus and charged it to repair account, and thereby increased the life and decreased the rate of depreciation.

Q. Such a reconstruction as I have mentioned with respect to these five water machines altered the pe-

riod of life which was assignable to the property when it was installed new, did it not?

A. I would say very probably, yes.

Q. Well, certainly?

A. No, not certainly. I do not know just what they did.

Q. You do not know what they did?

A. I do not know anything about just what they did to the machines then—unless the money was misspent, and I am not intimating that it was.

Q. Before estimating what you call the accrued depreciation set out in this Table 276, Exhibit 40148
AA-425, did you ascertain by examination and inspection the extent of the physical decay of each piece of property the cost of which you have depreciated?

A. No, I did not take each piece of property separately, I went over the plants generally only.

Q. How generally do you mean?

A. I mean generally to this extent: I went over them enough to see that the plants were kept in good repair, and from my knowledge going to plants before I know that it is the policy of the company to keep their apparatus in good repair.

Q. How many hours have you spent in these plants 40149
during 1919 and 1920?

A. I have not spent any hours in the plants in 1920. I could not say how many in 1919.

Q. About how many in the manufacturing plants?

A. Not very many in 1919.

The Master: I do not see how this is useful. He says the plants were kept in good condition.

Mr. Chambers: If he spent more hours there maybe he would modify that.

The Master: No, I think his testimony is perfectly clear.

Mr. Ransom: He is not challenging it.

The Master: His testimony in substance is, from his knowledge of the situation he knows that this gas company keeps its plants in good condition, and it is based upon the theory that he has that the plants are kept in good condition that he has assigned an accrued depreciation percentage to it which is smaller than he might have assigned to it if he did not know that the plants were kept in good condition. That is the substance of his testimony.

40151 Mr. Chambers: Exactly.

The Master: It is pure theory. I do not see how you get anywhere with this cross-examination. Have I accurately and correctly stated your views, Mr. Hine?

The Witness: Yes.

The Master: And this percentage, as I understood it, was taken on the basis of fifty years as the life of the plant?

The Witness: Of a manufacturing plant only.

Mr. Chambers: And on mains and services?

The Witness: On mains I took one hundred years as the life, and on meters and services, forty years average life.

40152 The Master: These are purely arbitrary figures that this witness has applied. I do not know, and I am not at all sure whether he is competent to do it.

Mr. Ransom: We will come to that in a few moments.

Q. Did you in any way compute the ratio of observed physical decay to each piece of property, to its physical condition when new?

A. No, sir.

40153

Q. Who assisted you in making up Table 276, so far as it had relation to physical property?

A. Assisted me in what way? Making the computations?

Q. Was that all that was done? Who assisted you in everything that was done in making up Table 276?

A. As far as the computations were concerned I was assisted by Mr. Goldthwaite and Mr. Pyle with absolute instructions as to just what to do, and went over everything that they did.

40154

Q. Neither of them is an engineer?

A. They are both engineers.

Q. They are?

A. Yes.

The Master: The record shows what they are. I do not understand that these men exercised any judgment about it.

The Witness: None whatsoever.

The Master: They simply did some calculating under the instructions of Mr. Hine. Mr. Hine is the witness who has claimed to have used his judgment.

Mr. Chambers: They are both engineers, though.

40155

Q. Did they give you any of these life expectancies of the different classes of property?

A. Not a one.

The Master: As I understand it, it is your judgment that you are expressing on this schedule?

The Witness: Absolutely my judgment and only my judgment.

The Master: Suppose you find out on what theory the witness believes himself qualified to use his judgment.

Q. Did anyone else assist you? You said that you wanted to correct your previous answer as to the man who did assist you?

A. I have forgotten the names that I stated. The men who assisted me in these computations were Mr. Goldthwaite and Mr. Neidhardt.

Q. Well, you did not rely upon the judgment or knowledge of either of these men?

A. No.

Q. Or any of these men?

A. No.

40157 Q. Or their advice?

A. No.

Q. Will you define what you meant by the term "Accrued Depreciation" as used by you in your Table 276?

A. In my mind depreciation is loss.

Q. No, I mean accrued depreciation.

The Master: What did you include in this figure?

A. Loss in worth or value due to all the causes, such as decay, wear and tear, obsolescence, inadequacy, and so forth.

Q. This rate of accrued depreciation which you
40158 have applied, is based on assumptions as to the number of years of life of the plant and equipment?

A. Well, I have measured it that way on the average—the useful life.

Q. You said you assumed a life of fifty years for a manufacturing plant?

A. Yes.

Q. Does that include the buildings, the apparatus above and below ground, and everything which goes to make up a complete manufacturing plant?

A. Yes, and the average.

Q. What life did you assume for a holder station?

A. Seventy-five years.

Q. Does that include everything appurtenant to a holder station?

A. Yes, an outside holder station, not connected with the manufacturing plant.

By the Master:

Q. In the manufacturing plant you included the holder as part of the plant?

A. The holder is part of the plant, yes.

Q. You included that as part of the plant?

A. The whole thing, fifty years life on the whole 40160
business.

By Mr. Ransom:

Q. Does your estimate of accrued depreciation set forth in this table purport to represent any physical delapidation or deferred maintenance?

A. Only such as that which is always present. I say they are kept in good repair. Of course, there are always some repairs needed. You do not go and put in one nail when that is needed, of course.

Q. At any time there is a certain amount that is necessary to be done?

A. Why, you let a little accumulate so the man will have enough work to keep him busy for a few 40161
minutes at least.

Q. Does it purport to reduce the plant's efficiency in operation—reduce its efficiency from that when new?

A. Only insofar as such things will normally occur in a gas plant kept in good repair. Some of those machines will now produce more gas than they did when they were bought.

Q. Nevertheless, you have depreciated them?

A. Certainly.

40162 Willard F. Hine, Cross.

Q. What provision do you make in what you call accrued depreciation for what you say is their increased efficiency as compared with the condition when new?

A. In my opinion—

Q. No, what allowance do you make in this Table 276 for that factor, if any?

A. I make no allowance for that factor, for the reason that any machine—

Q. No, that is an answer: you make no allowance.

40163 Mr. Chambers: Let him finish his answer.

Mr. Ransom: I am not interested in his reason.

The Master: He did not ask for his reason; he asked him if he made any allowance.

Q. In this Table 277 which you call adjusted book cost less depreciation, fixed capital, 1905 to 1918, do the figures which you give in the third line opposite "Plant" there measure reduction in operating efficiency from the efficiency of the same plant when new?

A. No, I do not believe so. I have defined my depreciation.

40164 By the Master:

Q. I want to ask a question at this point, Mr. Hine. Is it your testimony that these plants, depreciated in the manner that you depreciated them, are only worth —that their value today is only that depreciated amount?

A. Their value for rate-making purposes, yes.

Q. I did not say anything about rate-making purposes.

A. I think there are a great many values. You cannot just say "value."

Q. It will be for me to determine whether it will be for rate-making purposes or for something else, but I am asking you now whether it is your testimony and your opinion, assuming now that you are competent to give one, that the value of these plants is the amount that you get taking cost less depreciation?

A. Yes.

Q. You said there were several kinds of value.

A. Yes.

Q. What kind of value are you talking about?

A. I am talking about value for rate-making pur- 40166
poses.

Q. Is that the value for which it will sell?

A. No, not necessarily. It may be a great deal higher.

Q. Do you believe that a company intending to enter into the business of making gas in this city, willing to pay the fair value of the plant, would only pay this depreciated value?

A. Any company willing to do that would investigate so many factors besides that. It would be the earning possibilities, what they could do in connection with a new plant, putting up new plants and modern appliances, and the real estate. I am not bring- 40167
ing up that proposition at all.

Q. No, but I am. I am not at all concerned in this case with what the depreciated cost of this property is. The question I have got to determine is, as I understand it, the value of these plants. I am asking these questions in the light of the thought that occurs to me that I may have to strike out all of this testimony because it does not give the value of the plant, and I want to know whether you claim that the depreciated book cost represents its value, not limiting your answer to rate-making cases?

A. Well, I do not believe that you can say "Value" applying it to every sort of value. You have got to differentiate. I do not believe there is just one value for anything.

Q. In other words, there is a scrap value?

A. Certainly.

Q. And there is a value as a going concern?

A. Absolutely.

Q. And there is a book value, less depreciation?

A. Yes, possibly. Cost less depreciation.

Q. Yes, and you have drawn in your mind the kind
40169 of value that you say is a value for rate-making purposes?

A. Yes.

Q. Suppose, as a matter of law, the value for rate-making purposes is some other value altogether, what value is there in this table showing a depreciated cost of the property?

A. Well, if the depreciated cost is no criterion of value, then it would do no good.

Q. I understood you to say in substance, and if I am wrong about it you can correct me, that the depreciated cost of the property does not in any sense compare with its reproduction cost less any basis of
40170 depreciation today?

A. No, not at the present time.

Q. Or 1919?

A. No.

Q. And probably not 1918?

A. No, not 1918.

Q. In other words, some of these secondhand plants could probably be sold for more than they cost originally?

A. Well, no, I would hardly say that. There is not that much demand for that stuff. People are not making extensions and going into those things. You

cannot sell this scrap for more than you paid for it.

Q. That would not be any basis of value, that scrap value, from any standpoint?

A. No.

Q. But there is that scrap value to it?

A. Oh, yes.

By Mr. Ransom:

Q. Mr. Hine, suppose a company came into the City of New York today and proposed to operate a system of gas supply, is it your judgment that the company would be able to build a new manufacturing plant of equal efficiency at less than the original cost of these plants? 40172

Mr. Chambers: Just a minute. I am going to object to that as being incompetent, irrelevant and immaterial, speculative, improbable, quite impossible and not helpful in any way—our contention being that the years 1918 and 1919 are so abnormal, so extraordinary, that reproduction cost as of those two years has been condemned by the courts.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Could I have that question again? 40173

Q. (Repeated by stenographer.)

A. Well, that would require a great deal of study. I have not made such a study. They might be able to build a—they could not build an identical plant.

Q. Well, build similar plants?

A. Similar plants.

Q. In Manhattan?

A. In Manhattan, similar buildings, arrange them the way that they are.

Q. Or suitable buildings?

A. Well, now, if we get down to suitable and apply that to apparatus and the other things, I cannot state. If you say build similar plants, I do not believe that they could.

By the Master:

Q. Have you any idea at all as to what it would have cost to build a plant in 1918 on Manhattan Island to produce ten million cubic feet of gas, coal or water?

A. Well, not just now. It would cost a lot of money.

40175 Q. Or 1917?

A. Just the manufacturing plant alone?

Q. With all that goes with it, yes.

A. Do you mean distribution also?

Q. No, I am talking about the manufacturing plant with its necessary holders, equipment and the rest of it.

A. Well, I have not just got a figure for that in mind.

Q. It was very high in 1917, was it not?

A. Yes, very high.

Q. Very high in 1918?

A. In the latter part of 1917.

40176 Q. A good part of 1917?

A. The latter part of 1917 the prices commenced to go up; in the first part they were not up so much.

Q. So, beginning in 1917 it is out of the question to assume that on any theory you could duplicate any kind of a plant to produce ten million cubic feet of gas on any basis of what it cost twenty or thirty years ago?

A. No, I do not believe you could. I do not believe anybody would, either.

Q. Even if you took off depreciation there would not be any comparison, would there?

A. Take off depreciation on the new plant? There would not be any.

Q. I mean running it back to the reproduction cost less depreciation, and bring it back to the condition of these plants.

A. Well, not on the average.

Q. That would be out of the question, would it not?

A. Not on the average. Certainly during a great deal of that period, too, it would have been impos- 40178
sible to build them.

By Mr. Ransom:

Q. How do you arrive at your estimate of accrued depreciation as set forth in Table 276, beginning January 1, 1905? I will make the question a little more concrete. Was what you did the taking of the composite age as you figured it in 1884 from the Yalden report, and so on, and computing accrued depreciation for the estimated expired life?

A. Yes, practically.

Q. Well, exactly, was it not?

A. That is as I take it. I think that is it, yes, sir. 40179

The Master: As you understand the question, that is it?

The Witness: Yes.

Q. Will you give the accrued depreciation as estimated by you for the 21st Street station at the end of 1884?

The Master: Does this go back as far as 1884?

Mr. Ransom: No, but that is his starting point.

The Master: In other words, what you are asking him is for an analysis of his opening accrual item.

Mr. Ransom: How much he assumed or estimated or guessed to have accrued at the end of 1884.

A. $172,500.

Mr. Chambers: I object to the word "guess."

By the Master:

Q. How did you get that; what is that based on?

A. Based on Senate Document 47.

40181 Q. No, on what figures did you base it?

A. I based it on working back from the balance as of December 31, 1906, with the credits and the debits as shown by another table, and I got balances at the end of each year, which left me the balance in 1884 to which I applied it. Then from an investigation of Senate Document 47.

Mr. Ransom: Meaning the Yalden report?

The Witness: The Yalden report in this instance. I arrived at an approximate three-year age for this plant, taking account of the debits and credits that had been made as per that report and assuming then this age of three years,

40182 and a rate of two per cent a year would give me an accrued depreciation of $172,500.

Q. And you followed that system as to all the other plants?

A. Yes.

Q. And you tried to figure out the age of the plant from the testimony in the Senate Document?

A. Yes.

Q. And that is what you relied on as to age?

A. In 1884.

By Mr. Ransom:

Q. The Yalden report shown on pages 710, 711, 712 and 713 with respect to this plant, that plant

being at that time a plant of the New York Gas Light Company, shows that this plant began in 1884.

A. Yes.

Q. According to your computation, did not the depreciation begin in 1884?

A. I should say so, yes.

Q. How did you arrive at an assumption of three years of expired life in 1884?

A. Well, because from the debits and credits and from the other information given by Yalden it would make a very low age on these plants. I took the figures as they came out, the low figure. Now, it 40184
would seem to me that very probably the weighted average age of the plant must have been greater than that, but it came out around in that neighborhood and there was no other way of getting at it. There must have been very, very heavy expenditures and new additions in the last few years if the age was actually only three years. There was evidently credits in the Yalden report that were not—

Q. There were what?

A. There were evidently some credits there in Yalden that were not actual retirements.

Q. Even taking the weighted average which you would get from using Yalden's Table B. 40185

A. Which is that?

Q. As to this plant.

A. I do not know what that table is.

Q. Is that the table you used (handing witness)?

Mr. Chambers: Is it in evidence?

Mr. Ransom: Over my objection, I am afraid.

Mr. Chambers: I mean is that a part of the Yalden report?

A. No, I had to work from debits and credits; I could not work from just the balance, going ahead. If any property was retired and a credit made it would

40186 Willard F. Hine. Cross.

tend to reduce the age of the remaining property, most naturally.

Q. Does not a balance result from the debits and credits?

A. A balance does, yes.

Q. Did you use the weighted average that you got from the Yalden report?

A. No, this is a lesser figure in all cases than I got from a weighted average.

Q. And you got your computation here, by which you got that, and you computed the expired life,
40187 which was your starting point?

A. Yes.

Q. What part of the Yalden report did you use? what part of the Yalden report and what figures in the Yalden report, and what pages did you take?

The Master: How much does the witness show the cost less depreciation of the 21st Street plant today, according to his method of computation?

Mr. Ransom: They have wisely refrained from separating those things.

Q. Didn't you have this three-year computation worked out before, Mr. Hine?

40188 A. Yes, I am not working it out, but I was just trying to get references back to those pages.

Q. You used the copy of this Yalden report, printed in the record of the prior eighty-cent suit, did you not?

A. Yes.

Q. What?

A. Yes, I worked from that. I used pages 710, 711, 712 and 713 of—yes, that is what it shows.

Q. Those are the pages that I previously showed you?

A. Those were the pages. That was in Senate Document No. 47.

Q. Does anything appear on those—

A. Just a moment—and also some information on pages 640 to 643 of Senate Document 47.

Q. Just what information, as to what? Mr. Hine, over ten minutes have elapsed. Can't you give us some idea of what you had?

A. That was rather involved there, I have computations—

Q. Can't you give us where you got this involved computation?

A. It was not such an involved computation. I just wanted to be sure that I got it all. These refer- 40190
ences are bad, because of the fact that I used another source?

Q. Where did you find the debits and credits that you said you had to use?

A. I didn't find the debits and credits in connection with this company, I see, by looking at my working sheets.

Q. You said a few minutes ago you couldn't do it from the balances. Did you do it from the balances?

A. I have a few—

Q. Answer the question, did you do it from the balances?

Mr. Chambers: He is trying to answer it. 40191

Q. Did you do it from the balances?

A. It was done from those balances except from the fact of a few notes in Yalden's testimony, giving very little information, so that it was practically impossible to determine the age there, and that three years would be the minimum age. It was started in 1824.

Q. Practically impossible to determine the age where?

A. In the case of the 21st Street plant.

By the Master:

Q. Tell me this: In this figure of six million and odd dollars for plant less depreciation how much is ascribed to 21st Street in your computation?

Mr. Chambers: In 1905?

The Master: In 1918.

A. $1,588,400.

Q. Although over a million dollars, pretty nearly a million and a half has been put into the property since 1884?

A. Yes, sir.

40193 Q. The old plant has practically been retired and a new plant put there, according to the figures?

A. Every credit has been deducted as though it had been fifty years old, through that computation.

Q. It shows the weakness of that kind of theoretical computation. There has been put into the plant by additions, irrespective of repairs, extraordinary repairs, almost that much since 1884.

Mr. Ransom: What was that total of money spent?

The Master: I ran it away over a million dollars.

Mr. Ransom: Well, it is practically two million.

40194

Mr. Goetz: You took the figures from 1884 to 1906 only.

The Master: I took it to and including December 31st, 1918.

Mr. Goetz: It is shown here.

The Master: I took it here, 21st Street. I started off with two million and some odd dollars for that in 1884, and the total for 1918 was nearly four million dollars, the difference being the amount that was added.

Mr. Chambers: Yes, but the amount you took is not in evidence.

The Master: Yes, it is. The books are in evidence.

Mr. Chambers: Back to 1884, I guess not. Back to 1885 and 1886, no.

The Master: Limiting my statement then from 1906, say, the books of which are in evidence.

Mr. Chambers: I don't think so.

The Master: 1906?

Mr. Chambers: No, just a few scattering 40196
books.

Mr. Ransom: The books are all marked.

Mr. Chambers: No, just the operating ledger are in, the books are not in.

The Master: That is enough.

Mr. Ransom: You allowed some of the 1918 books in.

The Master: According to the operating ledgers from 1906 to 1918.

Mr. Chambers: Well, they don't show that.

Mr. Ransom: According to Mr. Hine's own tables—

The Master: What number? 40197

Mr. Chambers: That is different.

Mr. Ransom: 253, and with all his eliminations and conclusions and deductions, and so on, Tables 253 and 254.

The Master: Well, don't spend time checking up the figures. There undoubtedly was more spent in the plant since 1884 than the witness now ascribes as it cost less depreciation.

Mr. Chambers: Oh, no.

The Witness: No, not the cost less depreciation. I gave the depreciation. You asked depreciation, as I understood it.

The Master: No. In this exhibit you say book cost less depreciation. That is a little over six million dollars. I asked you how much of that six million dollars of adjusted book cost less depreciation was ascribed to 21st Street.

Mr. Chambers: On Table 277 you mean?

The Master: Yes.

Mr. Chambers: You said 276, as I recall it.

The Master: No, I did not.

Mr. Chambers: I knew your minds had not met on the question.

40199 The Witness: I get $2,227,727, exclusive of land of course.

The Master: You carry it on your books now at about $3,000,000, don't you?

The Witness: About $8,800,000.

By Mr. Ransom:

Q. On the basis of this schedule of balances which you said you used, pages 710 to 713 of Senate Document No. 47, being part of the Valden report, what expired life would you get as of 1884, or the composite expired age?

A. You could not get the composite expired age on that.

40200 Q. There is no way that you know of of getting it?

A. Absolutely none, because you could not take account of the credits. If you worked just on balances you would get an age that is too large because you would get nothing on account of your credits?

Q. How did you compute it?

A. I took those debits from 1824 on as shown by Valden, with a revision during the period from 1874 to 1880 on account of a notation he makes with respect to some depreciation that was written off, and

I assumed that the balance in 1880 was seven years old, that is, the accumulated balance, and with the additions up to 1884, 1880 to 1884, two years, and then figured back to three, which I would say is absolutely too low anyway, from the very nature of the case, and on all those plants the information was most meagre, and I have just taken a minimum amount.

Q. You don't know whether it is too low or too high?

A. It would not be conceivably possible for an operating plant to have had such a small age if it had 40202
been in operation since 1884, and where the net debits had increased in that fashion.

Q. In other words you consider this matter contained in these pages of the Yalden report as an absolutely reliable basis?

A. For what?

Q. For computing the composite expired age?

A. On this cost of plant, yes, you cannot get what I would think would be a figure that would be right.

The Master: Well, if your basis of depreciation is right that entire plant that was there in 1824 was out of existence?

The Witness: I have no doubt whatsoever 40203
but what the entire plant was out of existence.

Mr. Chambers: In 1880 you mean?

The Witness: 1884.

The Master: Do you think any part of it was there that was there in 1824?

The Witness: They gave net additions. If there had been credits for plant removed that would be out, and there were credits made.

The Master: In your figures would you have something for the property that was there in 1824?

The Witness: Not figuring from the net.

Q. When you found that the plant had been in existence some sixty years, it had only an expired life of three years, and now has gone on ninety years, how on that same basis would you compute the part of the ninety years that has expired?

A. I would say that the three years was too low, most certainly, at that time, and that from that time on we have reliable data for that computation, fairly reliable data.

Q. If the plant has gone on efficiently for ninety
40205 years, is there any reason to believe it would not go on for ninety years more?

A. I don't think the plant did. A plant at that location went on, but there is nothing that I know of that shows that the plant that was there in 1824 is there now.

By the Master:

Q. What is there to indicate that this plant, with necessary renewals and replacements, will not go on for ninety years more, the plant that is there now?

A. With that provision that you suggest, necessary renewals and replacements, I don't know any reason why there should not be a plant there for-
40206 ever, except that the value of the land might put it out. I should think there would be as long as there is a gas business.

Q. They could not make gas unless they kept renewing and replacing, could they?

A. Certainly not.

Q. And as long as they keep renewing and replacing, and as you have testified, keep the plant in good condition, that plant will keep on going on forever?

A. No, I would not say that. I don't believe you can point to any business in the world that would go on forever.

Q. You figured ninety years, didn't you?

A. No, I didn't.

Q. Didn't you say that this plant with the necessary renewals and replacements would be there ninety years from now if the land value didn't eat it up?

A. I said I didn't see anything now that would prevent it.

The Master: So far as I am concerned that is forever, because I will be dead and buried before that time.

Mr. Chambers: You said a plant, didn't you, Mr. Hine? 40208

The Witness: Yes.

Mr. Ransom: I object to the interruption.

Mr. O'Brien: If you want to get a concrete example, you start, your Honor, with a set of decked apparatus in your mouth or my mouth. We will still be able to talk at our age—you and I are about the same age—with the same facility, but the old bridgework is there, and there may be some camouflage teeth—

Mr. Ransom: This witness says he does not assign any life to any particular piece of property.

Mr. O'Brien: As the Court said in the Knoxville case as soon as that pipe is laid in the ground it begins to decay, it is on its way to the grave. Some of us may think the grave is nearer than others, but that is its destiny. 40209

By Mr. Ransom:

Q. What was the accrued depreciation estimated by you at the 99th Street station at the end of 1884?

A. $47,400.

Q. What number of years?

A. I took two and a half.

Q. You took two and a half?

A. Yes.

Q. How did you get two and a half?

A. Working from balances I got 3.4 years. I took two and a half.

Q. What balances? You did use balances for this then, did you?

A. I used the balances on this, all I had.

Q. Balances is all you had on this, too, wasn't it?

A. Yes, I think there are only balances there.

Q. Well, what parts of the Yalden report did you
40211 assume to be correct and used them on?

A. That will take some time. I will try to get that out now.

Q. Mr. Hine, a number of minutes have now elapsed. Can you give us any idea of what parts of the Yalden report you either used or rejected?

A. Yes, the parts relating to the Municipal and Knickerbocker Gas Light Companies.

Q. On what pages?

A. Well, they run on pages 739 up to 750, and the remarks about those companies as given in the first part of his report, from page 645 to page 648.

Q. When did you find that plant started?

40212 A. That plant did not start until after the Knickerbocker was formed and started in operation.

Q. When did you assume that plant started?

A. I didn't know about its start in operation.

Q. When did it start in operation, if you learned?

A. I haven't got the figure as to when it started in operation.

Q. You haven't any idea?

A. I know it was sometime after 1871, somewhere between there and 1884, I believe.

Q. And you reached a conclusion as to a composite expired age without any idea when the plant started?

A. It was a composite expired age of the book cost that I was trying to arrive at, and I did not consider the age when the plant started operations. It starts from the expenditure of money.

The Master: Suppose it took four or five years to complete the plant?

The Witness: That would be in there.

The Master: You would include that in the years that you have depreciated?

The Witness: Yes.

The Master: Although it was not operating?

The Witness: Yes. 40214

Recess until two o'clock P. M.

Afternoon session.

WILLARD F. HINE, resumed.

CROSS-EXAMINATION BY MR. RANSOM:

The Master: How much did you figure on 99th Street in this adjusted cost, less depreciation, Table 277?

The Witness: $510,203. 40215

The Master: That is what you say the adjusted book cost is, less depreciation?

The Witness: Yes, at 99th Street.

Q. That is your total figure for 99th Street, or your net figure?

A. Yes.

Q. Coming back for a moment to the questions I was asking you about 99th Street, didn't you find from various portions of Senate Document 47, that the 99th Street plant was built in 1877?

A. I found out that it was partially built in 1871, I believe it was started then.

Q. And that was by the Union Gas Light Company?

A. Yes.

Q. And then the project was temporarily abandoned, and the work was taken up and the plant built in 1877?

A. I found that later date; it must have been somewhere around there.

Q. Page 26 of the Senate Document 47, now you figured this accrued depreciation really upon payments of money shown by the books for a part and

40217 not upon the property itself, isn't that so?

A. Book costs.

Q. And your dates are based upon dates of payment for property and not upon dates of the erection of property?

A. No, not dates of payment necessarily, it is the date that it is entered on the books.

Q. Dates of entry on the book?

A. The dates it is charged against capital account.

Q. Now, as to 44th Street, did you—what composite expired life did you take for that as of December 31, 1884?

A. Two and one-half years.

40218 Q. When was that plant built, do you know?

A. No, I haven't that date. These plants were all pretty well mixed up, so far as Yalden is concerned.

Q. You haven't any idea when that plant was built?

A. No. I went through some stuff. I found the initial investment, or the initial charge against that in 1876.

Q. What portions of Senate Document 47, if any, did you take into account in taking that figure?

A. Those portions relating to the Municipal and Knickerbocker Companies, of Yalden's report.

Q. Some of Yalden's report?

A. The Yalden report: yes, it showed only increase.

Q. Shows what?

A. Only increases.

Q. What do you mean by that?

A. That is, not the debits and credits.

Q. Showed only balances?

A. Yes, net increases rather than debits and credits, generally speaking.

Q. Go back to 21st Street again for a moment, what expired age did you assume in 1918, for the 21st Street station? 40220

A. Carrying on the calculations it came out at 20.8 in 1918, 20.8 years.

The Master: Still to go?

The Witness: No, that is expired. That would leave—

The Master: About thirty years to go?

The Witness: 29.2, yes.

Q. That is an average for the whole plant, and your estimate of fifty years average life of a gas manufacturing station?

A. Yes.

Q. And Mr. Maltbie testified this morning that the units of a plant depreciates, and that the accrued depreciation can be computed on the basis of life expectancy, and that the plant as a whole can be given no higher value than the sum of its depreciated units. Do you agree with that statement? 40221

A. I do.

Q. That is the basis on which you have made this up?

A. Yes.

Q. So that at 21st Street, as an illustration, this fifty-year life expectancy, which you have taken, is a

composite of the life of all the buildings, apparatus and equipment which composed that station, is it not?

A. It is my judgment of that composite life.

Q. Is it a composite?

A. It is my judgment of the composite life. It is not made up from an analysis of the cost of every piece of apparatus in there.

Q. Well, what did you estimate was the life of the building at the 21st Street station, as of December 31, 1918?

A. I did not consider each separate item of each
40223 kind and item of property.

Q. What did you assume was the unexpired life of the purifiers?

A. The same applies.

Q. Or the total life?

A. The same applies.

Q. Do you know anything about what the life of condensers in that station is?

A. Life?

Q. Yes.

A. No, I have not taken it that way.

Q. Or of the steam boilers or scrubbers?

A. I have not taken any of it in that fashion.

40224 Q. The works connections of the holders?

A. I have not done it in that way.

Q. How do you say you made up a composite of, as you call it, this morning, an average giving fifty years for a station, without having made any computation or calculation whatever as to the units which make up that average?

A. Because in many cases I have taken it from a detailed inventory of all of the property that there is at a station, and have made a survey of each particular kind of apparatus, and from that have made calculations applying to the entire plant, taking each

individual piece of apparatus separately where an inventory and appraisal in detail was available.

Q. Can you give the computations as to the 21st Street plant whereby you reached this average of fifty years' life of the plant as a whole?

A. No. It is my judgment figure.

Q. No. Can you give the computation?

A. I told you it was not a computation, it was my judgment. It is higher than I have ever found for a station where I have made it in detail.

Mr. Ransom: I move to strike it out.

The Master: Motion granted. 40226

Mr. Chambers: No. I don't see why you strike out every statement of his.

The Master: Not responsive.

Mr. Chambers: That looks fair to me.

The Master: It is not responsive.

Q. Can you state the life expectancy of these units in this plant?

A. No, I have not made an estimate of each class or unit in there.

Q. Do you know it?

A. I could estimate it.

Q. What do you estimate is the life of the buildings at the 21st Street station? 40227

A. Well, I could not do that without a great deal of work. I have made no such estimate.

Q. You have not done that?

A. Not for this company, no.

Q. Any considerable amount of work?

A. Not for this company. I have done a very considerable quantity of work, yes

Q. Can you give the life of water gas generators?

A. I have not taken them up by each class and kind.

Q. Can you give it?

A. For this company, no, I have not made that study for each individual class.

Q. Well, do you know it now?

A. It can only be an estimate unless the life has expired.

Q. Well, life is a fact, isn't it?

A. It is an accomplished fact after the thing is gone only. Expectancy of life is not a fact, no.

Q. Do you know of generators retired on account of age and where and when?

40229 A. I know of generators retired because of the fact that they were not considered useful.

Q. Obsolete?

A. No, not obsolete.

Q. Inadequate.

A. They were replaced by generators that were practically the same in design.

Q. Where was this?

A. Well, I know of one case in Norfolk, where the generator was taken out, a United Gas Improvement generator, similar to the type of machine that they have at the 21st Street station, and that was replaced by a slightly larger machine, but it was not taken out 40230 on that account alone exactly, because the shell was gone, the connections were all cracking up.

Q. Is this what you were told?

A. No, it was not what I was told; I saw the apparatus.

Q. How long were you in Norfolk?

A. Oh, I was there off and on for—I was there a good many days.

Q. When did you first see the Norfolk generator?

A. Why, it was two or three years ago. I saw it the first time I went down there to go into the question of that gas plant there.

Q. Never had seen it before?

A. No. It was then being removed.

Q. What do you know of your own knowledge about the history of the maintenance of that generator, and the way it had been taken care of?

A. Well, I know one thing from looking at it, that it had not been maintained very well.

Q. What other cases do you know anything about that is, of your own knowledge, of water gas generators and their life, similar to this 21st Street?

A. In St. Louis the machines were practically all taken out, they were completely rebuilt, most of the 40232
steel work being replaced, new foundations put under them, new connections, they were rebuilt entirely, using a few parts to go into the new machines. There were several generators there along in 1907.

Q. Was this while you were connected with the company?

A. Yes.

Q. How long were you connected with the company?

A. Four years.

Q. Is that the longest that you have ever been connected with any company?

A. Yes. 40233

Q. That is the longest you have ever had given pieces of apparatus in a plant under your continuous observation?

A. No.

Q. What longer time have you had apparatus in a gas plant under your continuous observation?

A. Why, I have had them under observation here while I have been in New York, since 1911.

Q. How many times were you in the 21st Street generator house, from 1905, or whenever it was that you came out of Wisconsin, up to 1918?

A. In the generator house?

Q. Yes.

A. I should say six or eight times, probably.

Q. When were those times?

A. I do not remember.

Q. No idea of them?

A. I have been there several times prior to the commencement of this case, and I was in that generator house once since this case was started. I have no idea of the times the other ones occurred.

Q. Did you make a detailed examination of those
40235 generators on any of those occasions?

A. No, I did not; I looked them over generally.

Q. What kind of apparatus was it in St. Louis?

A. They were the same type of generator that they have at 21st Street.

Q. Well, what kind?

A. What do you mean by "kind"? It was a Lowe water gas set.

Q. By whom were they manufactured?

A. The sets taken down were manufactured by the Western Gas Construction Company, I believe.

Q. Do you know anything about when they were put in?

40236 A. Not now, no.

Q. Do you know anything about when the Norfolk generator was put in?

A. I did. I have forgotten now the exact age of them.

Q. Well, now, did you ever see a shaving scrubber of a gas plant which was retired from service because of expired life or age?

A. I do not believe that I have seen a shaving scrubber that has been taken out, to place one.

Q. On what life expectancy did you put in the shav-

ing scrubbers in reaching this assumption of fifty years as the average life for a plant?

A. I told you that I did not work it up on each class of apparatus.

The Master: Didn't you say that you agree with Mr. Maltbie in his method of arriving at it?

The Witness: I agreed with that, to be sure.

The Master: But you did not do it?

The Witness: I could not do it that way, because we had no detail inventory to do it with.

Q. Now, have you stated all that you know of in- 40238
stances of generators and scrubbers retired from service because of expired life, so far as your personal knowledge is concerned?

A. Why—

Q. Yes or no?

Mr. Chambers: Now, just a minute—

A. What do you mean by expired life? They were removed for some reason?

Q. Yes.

A. No.

Q. Because of expired life, so far as your knowledge goes?

A. No, I have not. 40239

Q. Well, what other instances do you personally know of?

A. I know of the Springer sets that were taken out of the Minneapolis Gas Light Company plant.

Q. I am speaking of water gas generators, not Springer sets?

A. Well, they are water gas generators of a different type.

Q. Radically different type?

A. Quite.

40240

Q. Well, confine yourself to the Lowe type of water gas sets, of the sort that you include in making your fifty year average for this 21st Street plant, have you given all the instances that you personally know of?

A. Well, I want to think over that a minute. No—

Q. Lowe sets retired for—

A. The Lowe sets of the Brooklyn Borough Gas Company plant, Coney Island.

Q. When were they retired, for age?

A. The entire plant—for what?

40241 Q. For age or expired life?

A. They were retired, they were taken out, the whole plant was taken down some four or five years ago.

Q. On account of age?

The Master: Replaced by another plant?

The Witness: They built a plant in another location.

Q. On account of age, or because of relocation?

A. That is a combination of all circumstances.

Q. Well, what do you mean by all the circumstances; what circumstances do you mean?

A. Well, all the circumstances that there were; I

40242 cannot say just why they were taken out.

Q. Did you know about them? Do you know all the circumstances?

A. Why, certainly not, I don't know all the circumstances.

Q. How long had these Lowe sets of the Brooklyn Borough been in use?

A. I do not recall.

Q. Have you covered all the instances of your personal knowledge as to Lowe water gas sets?

A. That is all I can recollect now.

Q. Not, in any of those three cases, Norfolk, where you went as an expert for the City; Minneapolis, where you went as an expert, so-called, for the City; the Brooklyn Borough where you went as a so-called expert for the Commission, can you state what in any one of those three cases was the actual period of use of those Lowe generators which you say were taken out?

A. No, I cannot state now.

Q. Now, as to the shaving scrubbers, can you state any instance where you have ever known a shaving scrubber as being taken out on account of expired 40244
life?

A. I stated before that I could not recollect now of any instance where I knew of a shaving scrubber having been removed.

Q. What life did you assume, or would you assume, for a shaving scrubber?

A. That would depend.

Q. 21st Street?

A. I told you that in this case I have not made an analysis of each particular kind and class of apparatus.

Q. Well, of the kind that is at 21st Street?

A. I have not gone into that subject in detail. 40245

The Master: What would it depend on? Take a new shaving scrubber of the type of the 21st Street plant?

The Witness: A new scrubber of that type would depend on the size and the way it was maintained.

The Master: I am assuming that it was maintained as you say this company maintains its apparatus.

The Witness: Well, I should assume an average life for that type of apparatus in large size.

probably somewhere in the neighborhood of forty years, for a shaving scrubber.

Mr. Ransom: I move to strike out the answer, this witness hasn't any basis for it.

The Master: I understood you asked for it.

Mr. Ransom: I did not ask for the life; I did not ask him for an estimate. I asked him for the basis for an estimate.

The Master: I understood you to ask what life he would assign, and he said it would depend, and I said depend on what, and I would
40247 not have asked the question unless I understood you had asked it.

Q. Wasn't the first shaving scrubber in this country built about twenty years ago?

A. I should say probably not longer than that, no.

The Master: Well, then, how do you know how long it is going to live?

The Witness: I can only estimate it with a comparison with all apparatus built out of those materials, and what has happened. Lots of this stuff has never gone out, no instances where it has gone out, for it is new, entirely new types
40248 of apparatus, and it has got to be based on judgment by comparison with other classes of apparatus.

Q. There is a lot of this apparatus has never gone out of use?

A. I do not believe that is true.

Q. Wouldn't you believe this to be a true statement, that in no plant in this country has a shaving scrubber ever been retired from service because of age or an expired life?

A. I certainly would not, no.

The Master: I don't quite understand that. By that, as I understand it, it is only twenty years since they started to put them in.

The Witness: Yes.

The Master: And you think the life of a scrubber is forty years?

The Witness: On an average.

The Master: You would not say that there was no scrubber that had been retired then because of age?

The Witness: No, I would say that they had accidents or something. 40250

The Master: No, I did not ask about accidents.

The Witness: He said age or expired life.

The Master: Well, by reason of age.

The Witness: Well, I do not think that is just the only factor that comes in. There is age and—

The Master: Well, you can blow it up.

The Witness: Well, they are not maintained, and adequacy comes in.

Q. Well, isn't it a fact that the tar element in a shaving scrubber acts as a preservative of the scrubber? 40251

A. Yes.

Q. You estimate a holder station as having a life of 75 years, and a gas manufacturing station of only 50 years?

A. Yes, sir.

Q. Aren't both kinds of stations built of the same kind of material, brick, mortar, concrete, iron and steel and so forth?

A. Yes.

40252 Willard F. Hine, Cross.

Q. Could not both, by proper maintenance, upkeep and replacement, be kept in efficient operation indefinitely?

A. I would say no, not just because I wanted to phrase my words properly, I would say that they could be kept up by making changes, by adding new parts, but I do not believe that they would reasonably be kept up. There is progress in the arts, there is inadequacy always occurring in every line, and the time comes when it does not pay to repair old things, but rather to get new ones. Now, if your question
40253 involves the fact if replacements were made there is no reason why a station cannot be kept at the same place any length of time, I do not know what kind of a station it would be, or what kind of apparatus it would be, but I do not believe that the apparatus would have an everlasting life, or any kind of a plant would have an everlasting life, no matter how it is repaired. It would be rebuilt at times.

Q. Well, you say you don't talk about separate units, you talk about the plant as a whole?

A. I do.

Q. What time would the plant as a whole go out of existence if the units were properly maintained
40254 and replaced?

A. And replaced?

Q. Yes.

A. I don't know, that would depend on conditions.

Q. It would never, would it?

A. It might not, no, sir, and it might go out tomorrow.

The Master: What; how?

The Witness: Well, because of conditions as to inadequacy, obsolescence and cost, or because they wanted to go into another place, it

might go out, but there is no reason why they cannot indefinitely keep a plant at a certain place, but the parts are continually depreciated.

The Master: Entirely replaced?

The Witness: Entirely replaced, they start all over again.

The Master: Yes.

The Witness: And in my computation when a new piece of apparatus was purchased I have assumed that the dollars that that cost started out new and that the cost of the old piece of apparatus was taken out and so it did not any longer affect the accrued depreciation, reduced the accrued depreciation by the cost. 40256

Q. Now, if the period during which the 44th Street station was a manufacturing plant, that is, until about January 1, 1914, you assumed that the 44th Street station had a life of 50 years?

A. Composite life, yes.

Q. Now, for a part of the station which remains only as a holder station, you have assumed a life of 75 years?

A. I have.

Q. So that the portion now forming a holder station gained for itself 25 years of life expectancy? 40257

A. No.

Q. By the dismantling of the manufacturing plant?

A. No.

Q. What did happen to it?

A. Why, I believe that the character of the apparatus in the manufacturing plant, buildings and the exigencies of inadequacy and obsolescence are such that as a whole they do not have the life of a holder station, which is made up of a large unit and a building and a pumping station more or less tied up with

that unit, and that a holder station for that reason has a longer life than a manufacturing station, and in fixing the 50 years for a manufacturing station, that was my judgment of the average for a manufacturing station, complete with holders. Now, an outside holder station I think would have a longer composite life.

Q. Well, hasn't the 21st Street station and holder capacity substantially equal to that of the 44th Street station?

A. (Examining papers.)

40259 Q. Well, for the purpose of the questions I am going to ask, perhaps we can assume that. In connection with the holders at the 21st Street station, are there not three valve houses, and also a pumping station, the buildings of which contain an equipment of engines, exhausters, valves and piping for controlling the distribution of gas and the like?

A. Yes. I do not recall the numbers there at present, but answering that, there are valve houses—

Q. (Interrupting.) With complete equipment?

A. Yes. Taking away the rest of the plant, and you leave a holder station.

Q. You could take away the rest of the plant?

40260 A. Yes, you could take it away and make a holder station with minor changes.

Q. Now, would you assume the life expectancy of this holder station part of the 21st Street station to be 75 years?

A. Yes.

Q. And likewise at 44th Street before the City took a part of the 44th Street plant, leaving the part which is now the holder station, the holder station part of the 44th Street plant when it was a part of the manufacturing plant you assumed to have a life of 75 years?

A. Yes.

Q. Well, now, if when combined with the manufacturing plant at 44th Street, the portion now forming a holder station had a life of 75 years, then, your estimate of accrued depreciation on the adjusted book cost of the entire plant, namely, $2,580,730 as shown by Table 267, and of the holder station, $801,017.06, must be based on a composite life of the manufacturing plant itself of how many years?

A. I have not figured that out.

Q. Well, it is only 33 years, isn't it?

A. I should judge it would be in that neighbor- 40262
hood.

Q. In other words, you have previously testified that the composite life of a manufacturing station was 50 years, whereas in the case of the 44th Street manufacturing station you put the manufacturing station in as having only a composite life of 33 years?

A. I did not. I have testified before that it was a manufacturing station complete with its holders.

Q. Well, what life would you give to a manufacturing station that did not have holders?

A. Well, I have not considered it that way.

Q. Could not figure it?

A. Yes, I could figure it. 40263

Q. Have not figured it?

A. I have not; it would depend on conditions. I have thought that on the average here with the manufacturing plants and holder stations, 50 years—

Q. What life expectancy do you assign to 99th Street?

A. Fifty years for the whole station.

Q. Including the holder capacity?

A. Yes.

Q. In other words, you assigned the same life to 21st Street with its large holder capacity and large

holder station incorporated in it, as you assumed for 99th Street, with a very small holder capacity?

A. Yes, I have taken the 50 years as an average for the manufacturing plant, including holders.

Q. Regardless of the size of the holder station included in the manufacturing plant?

A. Assuming the holder stations there are there.

Q. Regardless of the size of the holder station?

A. Yes, I have used that on each one.

Q. And regardless of the number of holders or the size of the holders or the equipment in connection
40265 —the extent of equipment in connection with the holders?

A. Considered these three stations that I had to deal with here, I have used the same life for each one, considering them an average.

Q. Now, at 99th Street is there anything to comprise a holder station apart from the manufacturing plant?

A. Yes, there are three holders there now that may be used as a holder station, but there is no separate valve house.

Q. There is not?

A. Not now.

40266 Q. In other words, at 99th Street you could not take the manufacturing plant away and still have a holder station?

A. Without making—there would have to be minor changes.

Q. Well, there would have to be buildings and apparatus installed, wouldn't there?

A. Well, you might leave the buildings and take care of it now.

Q. You would have to have a governor house?

A. Such as they have there now, probably leave one building and use it for that, or erect another one.

40267

Q. What is your estimate of life of the manufacturing plant at 21st Street, separate from the holder station?

A. I have made no such estimate.

Q. Would it coincide with the 33 year period deduced for 44th Street?

A. I would say somewhere in that neighborhood. I would not expect it to come out the same in any two of those cases. I have taken the 50 years on an average, applied to those three plants that they have here.

40268

Q. Supposing you had a manufacturing plant without any holder capacity whatever, aside from its relief holder, what period of life would you assign to it?

A. Well, I do not know. I should say, depending on the character of that plant, somewhere from 30 to 40 years.

Q. Do you remember that you testified before Commissioner Maltbie in the Kings County Lighting case, or before the Commission?

A. I have in some of those cases, in connection with the Kings County.

40269

Q. You made a valuation, or brought some engineer's valuation down to date on the basis of book entries, do you remember, Mr. Connett's or Mr. Wilder's valuation?

A. I did.

Q. Do you remember the Kings County Company had a manufacturing plant with a holder station about a mile or a mile and a half away?

A. Yes.

Q. What life did you assign to the manufacturing plant and to the holder station in that case?

A. Mr. Connett assigned the lives. I do not think I took Mr. Connett's figures.

40270 Willard F. Hine, Cross.

The Master: Well, in the case of a plant having a holder station a mile and a half away, do you consider the holder station a part of the plant?

The Witness: No, I would not. They have one storage holder at the works, and the relief holder at the works, also a small storage holder. The two main storage holders were about a mile and a half away from the plant.

Q. You say that with a holder station incorporated in it, a plant such as 44th Street was, or 21st Street
40271 is, has an average life of 50 years, and with the holder station out it has a life of 30 years, or a little more. How do you compute that difference?

A. I do not. That is my judgment considering plants of the character that the Consolidated have.

Q. You haven't any computation?

A. I have answered that before. I have not.

Q. You cannot give any detail?

A. No.

The Master: I think you have exhausted that.

Q. Well, now, do you assume the same period of life expectancy for a gas manufacturing plant, regardless of its size and capacity?

40272 A. No, I would have to consider all the factors, the way it is maintained, the size, the capacity, the type of apparatus, the size of the units.

Q. In other words, the life expectancy varies with the size of the plant?

A. I would say so, yes.

Q. How do you work out substantially the same figure, leaving out the holder stations, for 21st Street and 44th Street?

The Master: Or 21st and 99th.

Q. 21st and 44th, for example, or 21st and 99th?

A. I told you that I had taken those on the average, considering the plant here, and that they are all plants of such size that I would not say that the size of the plant had any particular influence on them.

Q. That is, you base it on your observation of the plants, and your knowledge of them?

A. Yes.

The Master: But the 99th Street plant is only about five million and 21st Street is about twenty-eight million.

The Witness: Yes, but it has large units, too, and is an operating plant of the size that is getting large enough so that it would not be affected so much. With small machines it would be a material difference. 40274

Q. You have to know about the size of the machines and the kind of the machines, and the status or situation of the plant?

A. They would all be factors.

Q. And you would have to have those things and take them into account?

A. Yes, sir.

Q. Observation of the plant?

A. Yes, sir.

Q. That is a matter of your knowledge, your judgment? 40275

A. Yes.

Q. After having observed?

A. Yes.

Q. And did you ever see the 44th Street plant in operation?

A. Yes.

Q. When?

A. Just before it was taken over by the City.

Q. How many times?

A. Once.

40276 Willard F. Hine, Cross.

Q. How long were you there?

A. I was there about two hours, I would say.

The Master: What was that, coal or water?

The Witness: That was a water plant I saw running. The coal gas benches or the benches over there, I do not believe had been used for years.

Q. And yet with 21st Street, with a capacity of about twenty-eight million cubic feet, and 44th Street with a capacity of eight and one-half million feet, you conclude that they each of them, aside from the holder
40277 station, have a life expectancy of thirty years, or a little more?

A. I took those figures that I used on the average. I might state that you would undoubtedly get different figures for each individual plant, they would vary somewhat, if you took it up piece by piece and individual piece of apparatus by individual piece of apparatus with the assigned age for each one.

Q. How could you do that if you don't know the life of the unit?

A. You would have to estimate the life of each kind and character of unit that you had there.

Q. You would have to know it, wouldn't you?

40278 A. Nobody can know the life of anything, he can only estimate the average life expectancy.

The Master: This whole item of depreciation is based on estimate, is it?

The Witness: It must be, necessarily.

The Master: Do you still think there is a difference between the words "estimate" and "guess" in this connection?

The Witness: Yes.

Q. Well, can you give the separate figures in making up your computations of the composite life ex-

pectancy of the 44th Street manufacturing plant, as it was in 1913?

A. I have told you I had no such figures.

Q. You could not make up any?

Mr. Chambers: You have asked that.

The Witness: I said I could not, I have no such figures and made up no such figures.

Mr. Chambers: You have asked that many times.

The Master: Yes, I think you are repeating yourself somewhat.

Q. How did you form the conclusion that the life 40280
of a manufacturing station was fifty years and not fifty-five or forty or forty-five?

A. I said that is my judgment.

The Master: I think you have covered it. That is another estimate or guess, depending on what word I want to use.

Mr. Chambers: If you were questioning the witness you would call it an estimate, and if you were on the other side cross-examining as a lawyer here, you would say it was a guess and charge him with guessing, and if it were your witness you would say it was an estimate.

The Master: And as a Master I shall have to 40281
use one word or the other.

Mr. Ransom: An estimate is a calculation from known factors.

Mr. Chambers: Well, it will hit both sides, you will have to say the other side is guessing, Allison, for instance.

Q. Have you made any calculation to ascertain what part of the manufacturing plant at the 21st Street station, as it was in 1884, remained in 1918, after deducting the retirements of the 1884 plant?

A. Just the holder station part, the holder, four old holders.

Q. And you say that is all that is left of the 21st Street station, as it was in 1884?

A. I beg pardon. Was that the 21st Street station?

Q. That is what I had asked you about?

A. I had the 44th Street station in mind. No, I have made no such investigation as to the 21st Street plant.

The Master: The buildings are all the same
40283 yet, aren't they?

The Witness: I do not know. I have not investigated that. There might be buildings like that—

Q. You have not made any calculation to find out how much of that 1884 plant is still there?

A. No.

Q. Either as to buildings or as to apparatus and equipment?

A. No.

Q. Wouldn't it be true that on your basis of calculation none of the 1884 property at this plant would be in existence today?

40284 A. No, it would not be true.

Q. Well, how much would?

A. I don't know. It would not take care of each individual piece of apparatus that made up an average life expectancy for a plant of fifty years.

The Master: What in your opinion is the apparatus or pieces of equipment of the shortest life in a manufacturing plant like 21st Street.

The Witness: Well, there would be the boilers, water gas machines—

The Master: Which is the shortest, in your opinion, the boiler or water gas machines?

The Witness: Well, I would say that they would be roughly about the same.

The Master: Is there anything the life of which you think is shorter than either of those things?

The Witness: Well, not considering major pieces of apparatus, no.

The Master: Well, now, what do you consider the life of the water gas set and the boilers?

The Witness: I should say on the average around twenty years. 40286

The Master: And the longest life you would ascribe to any article is the holder, which you say is seventy-five?

The Witness: The holder station, yes.

The Master: How about buildings?

The Witness: Well, the buildings I would say on an average the buildings would have a useful life, considering every factor and adequacy and progress of the art, a gas plant of about fifty years, buildings of that description, in a manufacturing plant.

The Master: Go ahead.

Q. Could you as a result of any inspections you have made at the 21st Street plant give any information as to which was the first machine installed, and which was the last of the three 120-cubic feet exhausters driven by Buckeye horizontal engines, located at the engine room at 21st Street station, one of which, according to the exhibits in this case was installed in 1905, one in 1906 and one in 1917 40287

A. I don't remember as to that factor. I believe that the last machine that was put in was pointed out to me.

The Master: Could you tell by inspection.

The Witness: Yes—well. I don't know as you could tell the first one, between 1905 and 1906. There would be another thing, if the 1917 exhauster was a new one or a second-hand.

The Master: I am assuming they were all new ones.

Mr. Ransom: They were.

The Master: Could you by looking at them, without looking at any date plate, or something of that sort, tell which was older than the other?

40289 A. Yes.

Q. How would you tell?

A. The exhauster itself?

Q. Yes.

A. Not the engine?

Q. The exhauster?

A. No, the type of that has not changed. Looking at the outside you could not tell except by the fact that they did have dates and you might—

The Master: I eliminated the date plate.

Q. How could you tell from the engine?

A. As to the engines, the types have changed somewhat, they are constructed a little differently.

40290 Q. You don't know that these engines are all alike?

A. No, I don't remember.

By the Master:

Q. If they were all alike could you tell which was older?

A. No, not if they were all exactly alike, you couldn't tell.

Q. The only way you could tell would be that the type had changed?

A. Yes, by looking at it.

Q. But the point of these questions was, if all these

machines were alike, the exhausters, you could not tell which was older and which was newer?

A. I could not if they were precisely the same type.

By Mr. Ransom:

Q. What did you assume as the unexpired life of the exhauster installed in 1905?

A. I do not.

Q. I say, what do you?

A. I do not.

The Master: What do you say is the life of an exhauster?

The Witness: All these figures would be the 40292
average life. I would say that the average life of a new exhauster of large size—

The Master: Kept in good condition.

The Witness: Kept in good repair all the time, and subject to ordinary uses, that is, you did not have to run too much, would probably be in the neighborhood of between fifteen and twenty years. That would be lower even than the boilers.

Q. Where did you ever see any such exhauster retired from service in twenty years as the result of age?

A. As the result of age only?

Q. Only age?

A. I don't know that anything is ever retired for 40293
just the one thing, unless it has a serious accident.

By the Master:

Q. You retire boilers on account of age, don't you?

A. On account of all the factors, on account of inadequacy.

Q. Doesn't a boiler get pitted and worn out?

A. Yes, but that is use.

Q. When you talk of age, you talk of the wear and tear that it has got through the years, don't you?

A. I think you have to consider this factor, as the boiler gets inadequate, and you think you need a larger

boiler, you are not going to take the care of it that you otherwise would, so it will deteriorate physically a great deal more during the last year or two than it would otherwise.

The Master: I don't know whether that is so or not.

By Mr. Ransom:

Q. When you speak of pitting as a cause for the retirement of boilers, does that apply to these tubular boilers of the Babcock & Wilcox type.

Mr. Chambers: Just a minute, he didn't say he
40295 retired them for pitting.

The Master: That is included in my question.

A. I would say that was one of the factors.

Q. You say they retire Babcock & Wilcox boilers on account of the pitting of the tubes?

A. No, not on account of the pitting of the tubes, they put in a new tube. You didn't say tubes before, as I understood it. I beg your pardon.

Q. What part would there be pitting in which would cause the retirement of the whole boiler?

A. In both of the legs and in the drum. The boiler would probably not be retired on account of any one
40296 of these things. As it gets old there are strains that come in it, it has settled some, and the time ultimately comes when they decide that they don't want to use it, and they want a larger boiler, and they are taken out and they won't allow them to run them at the same pressure as they used to allow them to run them at and they don't last forever.

Q. As a matter of fact these various parts that you have described as affected by pitting are simply replaced.

A. I don't believe I ever heard of replacing a drum—it might happen. In one case I have heard of

putting in a new leg, but it is usually a combination of all the circumstances.

The Master: It does seem to me, Judge Ransom that you have covered the witness's theory of depreciation pretty thoroughly.

Mr. Ransom: Well, I would like to take some of these concrete cases.

The Master: I know, but if you will illustrate by one or two or three, you have gotten as much as you can get.

Mr. Chambers: I have no objection to his cross-examining until he is tired. 40298

The Master: I know you haven't, but I have.

Q. If any one of these three machines, these three exhausters installed in 1905, 1906 and 1907, if occasion should ever arise to retire them because of inadequacy or obsolescence, the same fate would have to overtake them all regardless of age, would it not?

A. Well, just when a more modern unit is invented, it does not change everything at once, it is a combination of all the factors, you finally decide to take out the thing and it finally becomes desirable to do so.

Q. I am applying it to these three.

A. I don't know, it would depend on many other conditions as to whether you would retire them all at once. 40299

Q. In so far as retirement on account of obsolescence or inadequacy is concerned, that would be done with respect to any one of these machines just as with respect to the others, regardless of age in service.

The Master: In other words, you mean if that type of exhauster became obsolete they would all be obsolete?

Mr. Ransom: They would all be obsolete re-

gardless of when they were installed or when they were written off on the books.

The Master: I think that is so self-evident that it is hardly worth while arguing the question. Isn't that so, Mr. Hine, if that type of exhauster is obsolete all of them are obsolete.

The Witness: Yes, if it is absolutely obsolete they are all obsolete.

Q. Regardless of age?

A. If they are all of exactly the same construction, same kind of bearings, same strength in all their

40301 parts—

The Master: We have assumed all these things.

The Witness: If they are all the same, certainly.

Q. Now, if it appears from the exhibits in this case and the testimony of the witness Ahrich, pages 270 and 465, that the engine and exhauster house on the southwest corner of 21st Street and Avenue A, part of the 21st Street station, was originally built in 1892 and 1893, and that it was later reconstructed and extended, that the engines and exhausters were replaced and increased in numbers and the system of gas piping and valves altered and extended would it be your es-

40302 timate that the machinery and equipment could survive the walls of the building which were built before the machinery was installed?

A. Possibly. I can't say as to what they will do there in that particular instance, certainly not.

Q. That is, you would not have any judgment about that sort of situation?

The Master: He says he hasn't any.

Q. Would it be your opinion that the new steel floor testified to by the witness Ahrich would survive the walls and foundations of the building which were erected at an earlier date?

A. Absolutely not.

Q. Is it your basis of judgment that the more recently installed portions of the complainant system of mains and valves at 21st Street for controlling the transmission of gas testified to by the witness Ulrich, page 270 of the printed record, could and would survive the older portions of the valves and piping?

A. Not necessarily. It would depend on the particular conditions. The whole estimate is founded on averages, and you cannot apply expectancy of life to individual items any more than you can with a human being. They can figure out the average expectancy 40304
of life, but it does not apply to a particular individual at all.

Q. But those new items of expenditure and new items of property constitute debits which you have included in your method of depreciating book cost?

A. Yes, if the average life was exactly fifteen years some things would last much longer and some much less.

Q. Do you know whether in the last reconstruction and rearrangement of the equipment of this building the portion removed was the last previous addition or some equipment of an earlier date?

A. No, I do not. 40305

Q. You did not ascertain that at all?

A. No.

Q. If this building and this equipment are ever abandoned for obsolescence or inadequacy would not the same fate overtake all of it regardless of age?

A. Not necessarily.

Q. Would any part of it escape because of some 20 years difference in age?

A. Well, I don't believe that the age would come in there, but if the property was removed—age is probably the best measure of its depreciation. Now, inade-

40306 Willard F. Hine, Cross.

quacy cannot be charged up just to age. There are other factors, and there have got to be some yardsticks, but in my mind the years are the best yardsticks. Some things will last a great deal longer, some things will last probably longer—all these factors in depreciation, and obsolescence will set in on some things much quicker than on others.

Q. But the years do not affect these newer items you have referred to in connection with this building?

A. They are affecting all items together, and if you rearranged the items it might seriously affect your
40307 steel floor, which would be obsolescence.

Q. Just a few questions on the 132nd Street holder station, referring to your Table 276, from what date did you begin to compute depreciation on the West 132nd Street holder station?

A. I figured from the middle of 1905.

Q. By that you mean the 1st of July?

A. Yes, it would average that. I figured half a year old on the expenditures that had been made prior to 1905.

Q. What is the amount of depreciation which you estimated to have accrued at the end of the year 1906?

40308 A. At the end of the year 1906, $6,500.

Q. Have you not informed yourself, for example, from the testimony of Mr. Bradley, chief engineer of the Consolidated Company, in the prior suit, stenographer's minutes, page 87, that the West 132nd Street holder station went into service in July, 1906?

Mr. Chambers: Just a minute. I object to asking him a question about the testimony of Bradley in another case, not in evidence here, mixing it up with this.

The Master: I will allow the question.

Mr. Chambers: Exception.

A. I don't remember having seen that.

By the Master:

Q. Do you know when it was put into operation?

A. No, I did not investigate that.

Q. Do you know whether it was or was not July, 1906?

A. I do not.

Q. 1907?

A. I know it was around some time in 1906, I have heard from various sources.

Q. But you have depreciated it from July 1, 1905?

A. From the time of the expenditure in all cases. 40310

By Mr. Ransom:

Q. Then you have computed some thousands of dollars of depreciation upon it before it went into service?

Mr. Chambers: I object to that.

The Master: That is argumentative, I can see that. He just said so. In fact, I asked the same question in another form.

Mr. Chambers: We don't know when it went into service.

The Master: Yes, he says he knows it went into service about July 1, 1906, or he has heard.

The Witness: Some time in 1906. 40311

Q. If the exhibits in this case show that in 1911 and 1912 the company duplicate the engine and exhauster previously installed, and extended the equipment of pipe and valves inside the governor house at the West 132nd Street holder station, would you say that the apparatus originally installed was less useful in 1913 than that installed in 1911 and 1912?

A. Not necessarily; I would not know from that.

Q. If it appears from the exhibits in this case and the testimony of the witness Ulrich that this governor house in West 132nd Street was built in 1906 and

extended in 1912, do you estimate that the newer part of the building will survive that erected in 1906?

A. No, not under that. I would assume that the building will go practically all together whenever it is removed for any reason.

Q. As of what year did you begin computing depreciation on the Kingsbridge station?

A. 1910.

Q. What date in 1910?

A. I assumed an average of half a year for the balance of expenditures at the end of 1910, so that
40313 would be an average of July 1, 1910.

Q. What depreciation did you estimate to have accrued on this Kingsbridge holder station at the end of 1912, or in 1912?

A. End of 1912, $17,300.

The Master: Beginning with July 1, 1910?

The Witness: Oh, I beg your pardon. I have no depreciation in 1910. The accrued depreciation at the end of 1911 was $6,600, and at the end of 1912, it was $17,300.

The Master: So you started the 1st of January, 1911?

The Witness: The 1st of January, 1911, yes.

40314 The Master: When was that station put in service?

The Witness: 1911 or 12, I believe. I don't remember the date.

Q. According to the testimony of the witness Mirich, page 7,899 of the record, the Kingsbridge station was completed and put into service on July 30, 1912. Why didn't you figure depreciation in 1910?

A. Well, because of the fact that there I knew that that was not erected.

Q. But the expenditures—

A. The expenditures had started, but they were

rather minor expenditures in comparison with what occurred the next year.

Q. What was the expenditure in 1910?

A. $275,258.87. In the next year it was $439,000, which was double that amount.

Q. Why didn't you under the theory which you have been expounding today compute depreciation in 1910?

A. Because of the fact there that I knew that that was not in service.

The Master: You knew that as to other items, too, Mr. Hine 40316

The Witness: I did not know whether a part of it was put in; that was a whole unit built there.

Q. Then your knowledge or lack of knowledge with respect to the times when property is in service, and the actual state of work regarding the property, becomes a very important factor under your method of computation?

A. No, generally speaking, it is only on new construction, a brand new station or something like that where that would come in. In other cases the theory I have applied is to take the expenditures in the year made, without study as to what they were.

Q. Why did you compute depreciation in 1911 if 40317
you did not in 1910?

A. Because of the fact that the major part of that had been expended in 1911. It had been run up to $715,000 expended on account of that work, at the end of 1911.

Q. But you had computed many thousands of dollars of depreciation on this property before it had ever been completed and put in service?

The Master: Question not allowed. It is argumentative.

Q. And before it ever ran in fact?

The Master: I can see the fact.

Q. What did you assume was the average age of the street mains, services and meters as they existed in 1884?

A. 10 years.

Q. Was this an estimate by you, or was it the result of any exact computation?

A. I made a computation from Senate Document 47, got a figure in excess of that—I could not separate mains, services and meters, that was impossible—but I got a figure in excess of 10 years for everything, and
40319 I used 10 years for each one of these items, mains, services and meters as of 1884.

Q. That is, you could not get the expired life of mains from the Yalden report?

A. No.

Q. Or services and meters?

A. No.

The Master: How did you get that 10 years, then?

The Witness: Well, that was the Street Department, you could get a figure for the Street Department with the exception of the figures for one of the companies where there was a mixup
40320 for part of their expenditures, and plant was included also. Taking these figures and analyzing them as well as they could be analyzed—

Q. Taking Yalden's figures?

A. Taking Yalden's figures.

Q. You mean the mixup in Yalden's figures?

A. The mixup in Yalden's figures, that is, with respect to the separation into various classes of property, I felt that 10 years would be a fair age to assume for the entire street department equipment.

Q. Was that the result of any computation, or was it a mere assumption on your part?

A. The ten years?

Q. Yes.

A. The ten years was my judgment after a computation which gave a figure of more than that.

By the Master:

Q. The figure showed that it would last more than 10 years?

A. No, that was the age assumed then, the age in 1884.

Q. Oh, I thought you meant it had an expected life of 10 years?

A. No, on mains 100 years, and on services and 40322
meters 40 years.

Q. And the best you could figure out was that it was more than 10 years old, and so you took it at 10 years?

A. On the whole property, yes.

Mr. Chambers: Those three things.

By Mr. Ransom:

Q. What experience if any had you had with respect to the life of mains taken out of service in the early 80's?

A. None whatsoever.

Q. That is before you were born?

A. Mains taken out then?

Q. Yes. 40323

A. I have only seen statistics, and very few of those, about main removals at that time.

Q. With respect to mains at the present time you assume a life of 100 years?

A. I do.

Q. Regardless of size of the main?

A. On the average, yes.

Q. Would you assume the same life for mains under 4 inches as for mains over 4 inches?

A. Well, I have had to take these here in the absence of an inventory or appraisal showing separately

40324 Willard F. Hine, Cross.

the sizes. I would not allow as great a life for a 4-inch main as I would for a larger size main, but I don't believe I would allow over 100 years for any sized main on the average.

Q. Does not Senate Document No. 47, which you have used in this matter of mains, give all the sizes and lengths?

A. Senate Document 47?

Q. Yes.

A. It gives sizes of mains and lengths, yes.

Q. What computation did you use in reaching this

40325 100 year average?

A. That is just my judgment.

Q. No computation made at all?

A. No.

Q. What was the amount of depreciation you assumed to have accrued on mains, meters and services on January 1, 1885?

A. On mains as of the end of 1884, $524,000; services, $256,000; meters, $260,000—all as of the end of 1884.

Q. Between 1884 and 1905 what did you estimate to be the accrued depreciation which you added to your estimate for 1884?

40326 A. That was a computation there taking the debits and credits. I computed that there, and it is just the difference between those.

Q. What depreciation did you assume to have accrued between 1884 and 1905 which you added to your estimate for 1884?

A. Well, that is impossible to answer, because that is not what I have done. Depreciation has accrued every year. That is, you can't get it out of these figures. There have been retirements and credits every year, and those credits have offset the depreciation.

I can give you the depreciation on each one of those accounts at the end of 1905.

Q. That is, you cannot tell how much depreciation accrued on these three classes of property from the time of consolidation down to 1905?

A. Well, I have told you what I can tell you.

Q. Can you do that, tell how much depreciation accrued with respect to these three classes of property, according to your method of computation, from the time of consolidation at the end of 1884 down to 1905?

A. Well, I cannot get what it is that you mean. Do 40328
you mean the difference between the accrued depreciations in each of these accounts between those times

Q. I want to know how much depreciation occurred, according to your method of computation, in the first 20 years of this company's existence?

The Master: On the property that is got in November, 1884.

Q. On mains, meters and services.

The Master: Both what it got in 1884 and what it acquired since?

Mr. Ransom: Yes.

The Witness: And eliminating the fact that a good deal of it was removed—I don't get what 40329
you want.

The Master: Have you a figure showing what the accrued depreciation was in 1905?

The Witness: I have.

The Master: Let us have that, and see if that gets us anywhere.

The Witness: It is shown by Table 276. In connection with those other figures that would show the difference between the accrued depreciation at those two dates.

Q. I want to know how much accrued on mains, meters and services between 1884 and 1905.

40330 Willard F. Hine, Cross.

The Master: Isn't that the difference between the figures he gave and the figures he gives on Table 276?

Mr. Ransom: If the witness is willing to say that I will take his answer.

A. I have told you that I cannot understand what you mean by your question; I don't see what it is.

Q. There was according to your theory and your method of estimate, accrued depreciation on mains, meters and services year by year from the end of 1884 down to the end of 1905, wasn't there?

40331 A. Yes, sir.

Q. Now, what was the amount of it for the whole 21 years?

Mr. Chambers: Do you want him to give each one?

Mr. Ransom: The total for the 21 years.

Mr. Chambers: Year by year you mean?

Mr. Ransom: No, the total for the 21 years.

A. I cannot conceive of what it is you are asking. I can give you the figures the way I arrived at it each year, but I don't know what you mean by "accrued." You have to take care not only of the debits but the credits. Whatever property they retired during the
40332 year was deducted from depreciation and reduced the depreciation, because that is completely depreciated and is wiped off the capital account.

Q. You say that mains, for example, have an average life of 100 years?

A. That is what I have assumed.

Q. 21 years represents from 1884 to 1905. You say that meters and services have a life of 40 years. During this 21 years that this factor of age has been running, supposing that some one who believed in your theory wanted to find out how much depreciation occurred on mains, meters and services during that 20

years, what figure could you tell them from any papers you have got?

A. I don't know, I think I would have to pursue the calculation to find out what you want. I do not understand what it is. I have shown the working papers as to what I did. I do not know what it is that you want.

Q. Are you unable to answer the question?

A. I cannot understand the question.

Q. Have you not informed yourself of the fact that between 1884 and 1905 about 95 per cent of the services of the complainant company were replaced or installed in the process of rebuilding streets and sub- 40334
surface structures in New York City?

A. I have heard or read somewhere to that effect, something to that effect. I believe Mr. Simpson testified to that in the old case, Mr. Simpson, Senior.

Q. Yes, given at page 6908 and 6909 of the printed record in the present case?

A. Yes.

Q. If the property existing in 1884 no longer exist in 1905, should not the depreciation accrued by you on that property as of 1884 be dropped also from a computation of the depreciation account on January 1, 1905?

Mr. Chambers: I object, there isn't any such 40335
testimony and never will be any such.

A. I think that has been taken care of by the credits which represent the depreciation, and insofar as my depreciation goes down many years, so that the accrued depreciation at the end of one year is less than it was at the end of a preceding year, even.

Q. What is your answer to the question I asked?

A. That is my answer.

Q. Should it or should it not, according to your theory?

A. It has been done.

40336 Willard F. Hine, Cross.

Q. That is, all the depreciation accrued by on property in existence in 1884, all the depreciation accrued by you at that time on property then in existence, has been eliminated from your computation of depreciation accounts on January 1, 1905, to the extent that the 1884 property is not in existence in 1905?

A. I would say practicallly if proper credits had been made by the company on their books.

Q. To what account?

A. To their accounts services.

Q. Supposing that that matter instead of being
40337 handled in the fixed capital account were handled in the renewals and replacements account, would that likewise be true in your judgment, this 95 per cent on the services?

Mr. Chambers: I object on the ground that there is no such testimony.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. You mean if there were no action on fixed capital account? What is this renewals and replacement account charged against, reserve?

A. Repairs to mains.

Q. Charge services to repairs to mains?

40338 Q. Repairs to services I mean?

A. If they were charged to repairs to services then the credits to fixed capital would not reflect these changes, and therefore I would not have taken any care of them. I have, however, assumed, because I know that a good many of the services are charged to repairs when they are replaced by the same sized service, and in arriving at my 40 year estimate of average age I have taken that into consideration.

Q. Have you any computation making up your 40-year average of services?

A. No.

Q. No computation at all?

A. No.

Q. No details at all?

A. No.

Q. Have you not also informed yourself from the testimony of Mr. Simpson, Senior, at page 6905 and 6906 of the record in this case that of the mains in existence in 1884 between 90 and 95 per cent were prior to 1906 either replaced with new mains or had been stripped, examined, recaulked and otherwise gone over by Mr. Simpson and his men prior to 1906, and that as against 710 miles of mains in 1884 the complainant company had by 1906 laid 468 miles of new mains and abandoned 222 miles of small mains? 40340

A. I have read his testimony; I don't remember the details of course.

Q. That is substantially it, is it not?

A. I didn't catch anything there that sounds as though it was wrong, no.

Q. And much of this work as you are familiar with, had been charged to repairs of mains?

A. I did assume that all of the stripping of mains, everything but replacement, would be charged to repairs. I assumed, however, in the calculations that the books show credits where main was removed and abandoned, and debits for a new main laid, as was the practice in years afterwards, and as was the practice after 1884. 40341

Mr. Ransom: That is all.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. Did you have access to or were you furnished with any inventory from the Consolidated Gas Company of the age of each piece of plant and equipment?

Mr. Ransom: I object to that as incompetent. It has been fully gone into before.

The Master: I will allow it.

Mr. Ransom: He claims he could get it. We are not obliged to make it up for him.

The Master: Next question.

Mr. Ransom: If he hasn't got it then his table is worthless.

Mr. Chambers: The record shows that he asked for it and never got it.

The Master: The complainants are not required to do work for the defendants.

Mr. Chambers: Judge Mayer has ordered such in the Brooklyn, on motion.

40343 The Master: Well, that was not in this case.

Mr. Chambers: Well, we should have had it. I shall claim that to the bitter end. Hence, we had to do the best we could with the situation.

Mr. Ransom: Do you claim he didn't get—do the defendants claim he didn't make it up?

Mr. Chambers: What do you mean, what I call a detailed inventory?

Mr. Ransom: A detailed list.

Mr. Chambers: Yes, I do claim that he didn't make it up. It would have taken thousands of dollars, and a great deal of time.

The Master: Have you any other question of
40344 Mr. Hine, Mr. Chambers?

Mr. Ransom: That is a very valuable statement.

Mr. Chambers: I claim we did not get such an inventory as we wanted.

The Master: Mr. Hine, I don't think Mr. Chambers wants to ask you anything?

Mr. Ransom: He needs to, though.

63 Now, Mr. Hine, what do you mean when you speak of the term "observed depreciation" in your testimony on the cross-examination?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Q. In your opinion is there any depreciation where a property is being maintained at 100 per cent efficiency and is rendering efficient service?

Mr. Ransom: I object to that as not re-direct.

The Master: Objection sustained.

Mr. Chambers: Exception. I think that is all.

(Witness excused.)

Mr. Clark: I would like to call Mr. Ransom.

The Master: For what purpose?

Mr. Clark: To identify a document.

The Master: What document is it?

Mr. Clark: A letter of his while he was counsel for the Public Service Commission. 40346

The Master: Is there any question as to whose signature this is (referring to paper)?

Mr. Ransom: There is not.

Mr. Clark: I offer that in evidence.

The Master: Is there any objection.

Mr. Ransom: I object to it as incompetent as against this complainant. It has nothing to do with the issues in this case. It is a mere communication marked on its face, "Confidential Memorandum."

Mr. Clark: It is a part of the public files in the Public Service Commission. 40347

Mr. Ransom: It has no bearing upon—

The Master: Mr. Clark offers a letter to Hon. Oscar S. Straus, Chairman, Commissioner Whitney, Commissioner Hervey, Commissioner Kracke and Commissioner Hubbell, dated February 18, 1918, which has at the head of the letter in parenthesis, "Confidential Memorandum *Re* Commission Action in Changing Standard of Admeasurement of the Quality of Gas fixing the Thermal Equivalent of 22 Candle Power," to which Judge Ransom objects. The objection is sustained.

40348

Mr. Clark: Exception.

The Master: Where is Mr. Edgerton?

Mr. O'Brien: He is outside.

The Master: I want him here if you expect to call him as a witness.

Mr. O'Brien: All right. I have been waiting here nine days for the excerpts of the minutes of the Executive Committee so far as they cover supplies other than coal, oil and—

The Master: They are not here yet, so while we are waiting for them go ahead with Mr. Edgerton.

40349

Mr. Ransom: Mr. Addicks worked most of the night last night and has been working almost all day today in comparing these things so as to have them correct and complete, going over it himself, a most irksome and exhaustive mass of detail.

The Master: I assume he will have them here as soon as he has finished with them.

Mr. Ransom: He thought he would have them here today.

Mr. O'Brien: Of course we want them before the curtain is drawn on these proceedings—

The Master: You will get them.

40350

Mr. O'Brien: I am not asking for them just to keep on them for the summer.

Mr. Ransom: I thought you wanted them for fuel, B. T. U.

HENRY H. EDGERTON, recalled:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Mr. O'Brien: I move at this time to strike out from the record the testimony of Mr. Frederick

J. Mayer, deceased, and Colin Simpson, deceased, on the grounds previously stated, and because of the testimony taken since that time.

The Master: Motion denied.

Mr. O'Brien: Exception. I may state to the Court that as to the appraisal of the property of the complainant we have deemed it necessary, by reason of the Master allowing the testimony of experts now deceased to be brought into this record, to complete the record so far as we can by the testimony of Mr. Edgerton, who was called for the same purpose at that time. The appraisal 40352
part of his testimony will in the main be directed to the period concerning which he testified in the original case, and I am putting him forward at this stage of the proceedings—he is to testify on other matters afterwards—because of the fact that that appraisal was incorporated into the record.

The Master: You don't have to apologize for calling him.

Mr. O'Brien: I am limiting it so that your Honor will understand that it is being put in there because you have accepted that, and so that if the case is on appeal the Court may have before them 40353
at least a partly complete record as to the properties at that time as appraised by Mr. Edgerton.

Q. Mr. Edgerton, when did you first begin a study of the gas making business?

Mr. Ransom: I object to that as fully covered. That was gone into exhaustively when Mr. Edgerton was on the stand. I have not cross-examined him as to his qualifications.

Mr. O'Brien: Well, I want to make my own record in my own way.

40354 Henry H. Edgerton, Direct

The Master: You don't want to waste time any more than we do. It seems to me the qualifications and his record has been gone over pretty fully, but go ahead and ask him.

Mr. O'Brien: I want to have this thing set right on the record, and I will be mindful of the fact that we want to save time, but I want to have it complete.

The Master: Go ahead.

A. 1858.

Q. At that time how far have you engaged in the
40355 study of the gas making business?

A. That is when I began. I began as helper to the secretary and superintendent in Fort Wayne, Indiana in 1858.

Q. How long were you there?

A. I was there until I went to Europe, I think in 1860.

The Master: I thought you were in college in 1858, 1859 and 1860?

The Witness: No, sir; I went out of college at Lawrence University in 1858, and I went right to the gas business.

Q. While you were at Fort Wayne and before you
40356 went to Europe you say you were a gas maker's helper?

A. No, not a gas maker's helper, helper to the secretary and superintendent. In fact, I gradually took on the duties of secretary and superintendent, because the gentlemen were not there most of the time, one was building gas works, and the other had other business, so I gradually took on his duties.

Q. Did you actually engage in the making of gas at that time?

A. Yes, you might say directing the making, yes.

Q. What kind of a plant did they have, what is the first test they had of making gas?

A. Coal gas process.

Q. What was the capacity of the plant, about how much?

A. Oh, it was a small plant of about 50,000 a day.

Q. Did you design any buildings or structures?

A. Not at that time, I did not begin—

Q. Your whole period at Fort Wayne at that time covered about two years?

A. About three years.

Q. In Europe did you devote your time to the study 40358
of the gas making science and industry?

A. Incidentally, I was studying chemistry and engineering, and that would be called now engineering chemistry. They have it combined now, but I visited a great many gas works and kept up, because in the mean time I bought the Fort Wayne gas works, acquired control, and I was studying with a view of bringing it up to the standard as I found it abroad.

Q. Well, in Paris, you studied at what school?

A. L'ecole Centrale. I attended lectures. I had the freedom of L'ecole des Mines, and L'ecole de Chaussess.

The Master: It seems to me we were over all 40359
this.

Mr. O'Brien: Some of it, yes.

The Master: Get me the record of Mr. Edgerton's former testimony.

The Witness: I beg pardon, I never did put this in in full, because I built a great many more plants than I said there.

The Master: I don't want you to repeat what was put in before. There isn't any necessity for it.

40360 Henry H. Edgerton, Direct.

Q. What cities in Europe did you visit and make a study of gas plants?

A. Liverpool and London—Mr. King went to Rome, I didn't go immediately, but I turned up there, his son managed a plant at Rome. Mr. King had charge of the plant at Liverpool, and later was Editor of the London Journal of Gas Lighting. I got acquainted with a number of gas men.

Q. Did you visit Vienna and inspect and study that plant?

A. No. I went to Vienna, but I did not go to the
40361 gas plant at Vienna.

Q. Name the other plants that you did examine?

A. Well, there were plants all around Paris, around, Ivry and Passy, and a number of plants. I visited pretty much all the plants, but the locations of them I don't remember exactly. At Ivry they had the old system of taking the gas off of the top of the holder instead of passing around underneath the water, took it off the top, a great big elbow-shaped pipe. That was the first Napoleon method.

Q. When you returned to the United States you engaged in the gas making business, did you?

Mr. Goetz: I object to that, that is a very broad
40362 statement.

The Master: Objection overruled.

A. Not immediately.

Mr. O'Brien: We will give it to you concretely enough and in detail enough. Don't you worry about that, Mr. Goetz.

The Witness: I went to Arizona mining for about two and a half years.

Q. Will you state as briefly as you can the gas plants that you built, or parts of which you built, the plant equipment that you installed or designed, and the extent to which you engaged in the gas making industry at that time after you left Arizona.

A. Well, I reconstructed the Ft. Wayne Plant the first thing.

Q. Making it a plant of how much capacity?

A. Oh, about trebled the capacity.

Q. Before, what kind of a process was it?

A. Coal gas at that time. I brought back plans from the old country and changed the plant at Ft. Wayne, and also started the firm of Murray, Baker & Walker, into the construction business based on the information I had obtained.

Q. You mean in the construction of gas plants?

A. Gas plants. 40364

Q. And after that you constructed plants at what places?

A. Well, advisory, at Aurora, Illinois, Galesburg, Illinois and quite a number of plants constructed by Murray, Baker & Walker. Mr. Walker stepped out and Baker stepped out, and left Kerr Murray as the proprietor.

Q. Where else?

A. Then in 1871 there came on the tapis this question of making gas from naphtha. I examined this and found it feasible and advisable and began to build a small works first. The first works I built was Sunbury, Pennsylvania, and then Tamaqua, Montenoy City, Shenandoah, Plymouth, Bloomsburg, Reading, 40365
Shamokin.

Q. Did you build any works in Chicago?

A. Yes, I started the works in Chicago right after the fire.

Q. What work did you do in New Orleans? A. I started the New Orleans Construction at the same time, that is, I took them both in hand about the same time, Chicago first and then New Orleans about five months later, and I built works in Milwaukee for Plankenton and Armour, meat men. Also Faribault,

and Stillwater, and Red Wing, Minnesota; Jackson, Michigan; Hamilton, Ohio; Middletown, Ohio. I was consulted in regard to building at Detroit, Michigan about 1873.

Q. Any in Tennessee?

A. No, I didn't build any in Tennessee. I built a plant subsequently at Ashvillle.

Q. Ashville, N. C.?

A. Ashville, North Carolina. I was advisory to the construction or changing the Mutual Works from coal gas to coal gas and naphtha gas in 1873, 1872 or 1872.

403667 Q. Where?

A. New York. At that time there was organized what was called the Gas Light Company of America, in which Mr. C. H. Garrison was interested, Mr. John P. Kennedy and Mr. Vanderbilt, the idea being to develop the use of naphtha for gas making.

Q. Did you supervise any of their work? A. The coal gas works of the Mutual had been built by Mr. Kennedy for coal gas. It was suggested to him that this new gas would be the thing for him to get, so they telegraphed me at Chicago to come on and give him the points in regard to the manufacture of naphtha gas. I came on here, and he adopted the plan.

403668 Q. Where you say you built plants, did you have anything to do with the drafting of the plans, the securing of the material and labor and the actual erection of the plants?

A. Yes, I would make the plans and buy the material, lay the mains, in all cases supervise. Of course, running from point to point as I did, I had assistants. Mr. J. E. Patton was helping at the time.

Q. Was he a prominent gas engineer?

A. No, he commenced in 1871 when this oil gas came out, or naphtha gas. I took him into partnership. I put in a plant for compressing gas in Reading, Pa.,

and the Reading Railroad used it in their cars through to Chicago, compressing gas to about 300 pounds pressure, and one of those cars, with two cylinders, would last about a week, lighting.

Q. Subsequently, did you enter the employ of the United Gas Improvement Co., and in what capacity?

A. That came along in 1882. In the meantime I had built quite a number of works and had carried on the business of the Gas Light Company of America in the Drexle Building.

Q. New York City?

A. New York City, for about three or four years. 40370

Q. In what capacity were you connected with that company, superintendent?

A. I was engineer.

Q. Manager?

A. I was manager and engineer. The president was Mr. Kennedy who built the Mutual works. I worked under his direction. We tried to put in a plant in Lowell, Mass., but did not get permission. At Providence we got permission to put in a plant, Providence, R. I., and did.

Q. In what capacity were you connected with the United Gas Improvement Co.?

A. That was in 1882. I was engineer and chemist, 40371 you might say chief engineer, because there was no other engineer at the beginning.

Q. While connected with that company did you erect any plant or alter any plant?

A. Yes, I built a new plant for the New Orleans Gas Light Co. at a cost of about $700,000, to change the coal gas plant that I had built in 1872 and 1873 to the manufacture of water gas and coal gas. We used coal gas with it.

Q. And as chief engineer and chemist did you take any part in the running of the plants of the United

40372 Henry H. Edgerton, Direct.

Gas Improvement Co. where they made gas?

A. I spent all my time at the plants, that is, going from one plant to another, as we gradually accumulated plants. We accumulated the St. Louis plant, the Jersey City, also Harrisburg, Reading, Waterbury, Omaha, during my time, and a number of other towns. I can recall them by taking a little time, but I went over the whole ground. Savannah, might say, and Atlanta, Georgia.

Q. In all this construction work did you secure the materials and the labor necessary?

40373 A. No, the work was divided up then.

Q. You are referring now to these works of the United Gas Improvement Co.?

A. Yes, that was systematized by taking in a good deal of help, because it required a superintendent, an assistant superintendent, and in fact we accumulated a vast amount of business, and no one man could take care of the whole of it, but I did the chemical work and the engineering suggestions. In the development of the Lowe process I only put in suggestions, for the simple reason that it was a sort of—not a competitive, but, at the same time, the United Gas Improvement Co. owned the Lowe patent and they did not own my

40374 patents, and therefore they had to pay me a royalty, and it appeared that that ought to be taken care of independently as far as construction was concerned, although I did all I could to help them along.

Q. Did you speak about Danbury? A. Danbury was the construction of a building in 1879 and 1880, and I made it a special headquarters for a laboratory and experimental point. Also I built at Wallingford, Pensecola, Waco, Texas, and aided at Galveston and Houston, Texas, advised in regard to those coal gas plants. I may say that in New York I was on good terms and made suggestions and visits to all the present Consolidated Company's plants—

Mr Ransom: I move to strike out the statement of the witness that he was on good terms. He hasn't any right to reflect on this company in that way.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. Mr. Edgerton, did you build a plant at Waterbury, Conn.?

A. Yes, that is, I designed some improvements there. They had a plant put in there on the Lowe process before I went there, but it had to be improved. We had what is called the Springer process, just like 40376
this Williamson, the same essentially as the Williamson.

Q. In your work of designing and constructing these various plants that you have mentioned, did it in most cases include design and construction of the distribution system as well?

A. Oh, yes, I paid particular attention to the distribution of gas, because that was the point where we were behind, woefully behind in this country.

Q. In these various experiences that you have so far narrated, have you taken part actually in the direction and running of the plants?

A. Yes. 40377

Q. Making gas?

A. Yes, sir; I started some of them, and I found out—I would now be called an inspecting engineer, to see that they kept up to a uniform standard of operation.

Q. You spoke about the chemistry end of it. Will you state in a few words just the extent to which you have gone into the chemistry of gas making?

A. I took special instructions in the chemistry of gas making abroad, and also imported all the finest apparatus for the purpose that could be had, so that

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Prof. Silverman said I had the finest gas laboratory in the United States, much ahead of those of the Manhattan company or any of the New York companies. At the present day I notice their gas analysis apparatus is simply a cheap affair, in analyzing gas over water. It has a certain practical purpose, but it is very far behind the status of gas analysis, you would not hardly call it chemistry at all.

The Master: I think we are getting too far afield here. Just down to the qualifications.

40379 Q. Later, from 1900 and on, will you state what your experiences were in the construction and operation of gas plants?

A. Well, in 1901, I started out on my own hook, that is to say, I left the United Gas Improvement Company, although I did work for them afterwards, special work, especially in chemical work like the analysis of the carbide business in producing acetylene gas, and at that time I began to take an interest in the development of electricity somewhat, because although it was financially not as successful as gas, it still had to be studied.

Q. That was in the earlier days of electricity?

40380 A. Well, you could hardly call them the earlier days, but they were the earlier successful days of electricity. It had been installed for street lighting fifteen years before that, but it had not been developed as a competitor with gas lighting until along in the 90's.

Q. Did the General Electric Company have any gas works?

A. Yes, I built gas works for the General Electric Company, at Butte, Montana, and changed works out in Minnesota; and also down at Ashville, I changed that plant.

40381

Q. During these experiences have you made a study of the various processes of making gas and the various improvements that were being made in gas making equipment?

The Master: Just answer the question, Mr. Edgerton, yes or no. Have you studied it?

A. Certainly, I have been doing nothing else.

Q. And the gas making equipment?

A. Yes, sir.

Q. And have you invented from time to time various improvements in the gas making business?

A. I have, and they are in use now.

40382

The Master: "I have" is the answer.

Q. Can you state what they were?

A. Yes, I can state what they were. This test by which they graduate the oil, the admission of oil, into the gas making apparatus, was decided by the Patent Office in my favor and was contested by Mr. Bradley.

The Master: No, I do not want all that. You were asked what improvements you invented. That is all I want to know. I have to cut this short.

The Witness: It will take you quite a while to listen to that.

The Master: Well, I do not want to.

40383

Mr. O'Brien: Your Honor, I do not want, as I go along in queries into various phases of his testimony, to be compelled to have the examination broken up until we stop to qualify him on various branches.

The Master: No, I am not doing that, but I do not want Mr. Edgerton to say that he invented something and then start to tell us of a row that he had with Mr. Bradley and what the Patent Office did with it. Just state what patents you invented, that is all.

The Witness: You are mistaken, there was no row about it.

The Master: Next question.

Q. Will you enumerate, Mr. Edgerton, the various devices or mechanisms or pieces of equipment that you have invented that are used and have been used in the gas making industry?

A. Well, you may take the first at New Orleans was to obviate the pressure of the dip pipes on the drawing-off of the gas. In other words, it eliminated the dip seals. That was an invention of some use.

40384 Then came the oil gas—

Q. Is that one you mentioned used today?

A. Oh, yes.

Q. Generally in the gas making business?

A. Well, there are different ways of doing it now. I had a very simple plan. There are different plans of unsealing the dips.

The Master: The next one now.

The Witness: The shaving scrubber, which I introduced first—well, in the first works I built at Sunbury.

Q. Sunbury, Pennsylvania?

A. Sunbury, Pennsylvania. The old tyye of scrub-

40386 ber, which was a coke scrubber, clogged up.

The Master: You introduced a new type of shaving scrubber?

The Witness: A new type of shaving scrubber, and that is what they are using here.

The Master: Next question.

The Witness: I introduced the washing of gas to take out the tars or oil, but it took out to much, took out some of the illuminating powers.

Mr. Ransom: I move to strike that out.

The Master: No, I will let him state that.

Mr. Ransom: Exception.

The Witness: I discontinued that; it was not controllable exactly. Then the resetting of retorts, the introduction of the upright retort, that was mine. It took them some time to get around to it, but I introduced the upright retorts in Waco, Texas, in 1874, or possibly '75. They are now rapidly displacing these horizontal oil and coal wasters.

Q. What else have you invented in connection with the gas making business?

A. Gas compression and gas burners and gas testing apparatus, and all along the line I took out patents. 40388
That lasted from 1871, to, you may say, 1882, or along there. I think one of the last ones I took out was in 1882 or 1883.

Q. Mr. Edgerton, you testified in the action originally brought by the Consolidated Gas Company of New York to test the validity of the statute in 1906?

A. I did.

Q. And for the purposes of your testimony in that case did you make careful examination of the plant and equipment and other properties of the company as of that time?

Mr. Ransom: Objected to as calling for a conclusion. Let him state what he did. It is 40389
a conclusion of this witness which he is not qualified to give.

The Master: I think that is so. You made an examination?

A. Yes, I was acquainted with them before that. I had been visiting every gas plant in New York City for years.

Q. And you were well acquainted with them?

Mr. Ransom: Objected to as calling for a conclusion.

The Master: So he said. He said so.

Q. You examined them?

A. I examined them, and was acquainted with the personnel, and held many long interviews with Mr. Bradley and pretty near all the other local gas men. I was as well known as any one in the gas business I presume, at that time.

Q. You knew Mr. Bradley intimately?

A. Intimately.

Mr. Ransom: Objected to.

Q. And Mr. Gawtry?

Mr. Ransom: Objected to.

40391 The Master: Objection sustained. Do not get into that. We are talking about plants, not individuals. I do not care anything about that matter.

Mr. O'Brien: Speaking about assuming things and inserting adjectives into questions, we have been listening to Mr. Ransom for many days now giving us these Ransomese questions, where he rings in all kinds of orotund, deep, guttural sounds, these various Desperate Desmond adjectives and adverbs.

The Master: Then don't you do it.

Mr. O'Brien: I won't fall into that; I will

40392 give you something choice if I do.

The Master: Mr. Edgerton testifies that he knew these plants for many years prior to 1905, and had seen them and knew all about them.

The Witness: I obtained copies of Mr. Farmer's drawings of the plants, he being engineer of the Manhattan Company at that time or, that is, designer.

Q. At what time was he engineer of the Manhattan Company?

A. Well, I don't know the exact date, but it runs back anyhow to the 60's, and ran on to the 70's, 1871 or '72 or '73. I used to meet him frequently.

Q. And you knew Mr. Rowland?

The Master: I said I did not care about that, Mr. O'Brien. The question is not allowed.

Mr. O'Brien: These things will be appropriate later; I better bunch them in here now, because all of these celebrities will figure more or less in his testimony.

The Master: I do not care whether he knew Mr. Rowland or not.

Q. Had you visited the various stations and plants of the Consolidated Company?

A. Every one of them. 40394

Q. Prior to your taking up the examination for your appraisal?

A. I presume I visited the Municipal plant 50 times in all.

Q. Saw them making gas there?

A. Saw them making gas.

Q. Saw them using the material?

A. Yes, sir.

The Master: Where was the Municipal plant?

The Witness: 44th Street and North River.

Q. And you saw them making gas in all the other plants?

A. In all the other plants. 40395

Q. And you knew how the processes were being worked?

A. Yes, sir.

Q. Saw and knew what machinery they had?

A. Exactly.

Q. Discussed with the engineers in charge of them the methods of making gas?

Mr. Ransom: I object to the continuous leading of this witness with respect to matters that apparently went back of 1884.

The Master: The objection is overruled. I do not think that is essential. I think it saves a little time to have him do it, though.

Mr. Ransom: Little as I care for Mr. Edgerton's testimony, I would rather have his than Mr. O'Brien's.

Q. Proceed, Mr. Edgerton.

The Master: No, I think it calls for another question.

Mr. O'Brien: Oh, I beg your pardon.

Q. For the purposes of your testimony in the trial
40397 of the first case you again examined the plant and equipment of the complainant company?

A. Yes, sir.

Q. And approximately how much in time, was spent in that work?

Mr. Ransom: In the examination?

The Master: Do not interrupt.

A. I began in December. We were limited in time, but—

Q. I do not mean the testimony, Mr. Edgerton, but the preparation for the testimony, the making of the appraisal. That covered how many months?

A. It did not cover any months. As far as that is
40398 concerned, the time that I had was devoted to comparing schedules handed to us by Mr. Mayer or Mr. Mathewson and comparing them with the plant, the apparatus, the site, and the buildings. I went to each plant and prepared the buildings and apparatus with the schedule as furnished, and then from that made my appraisal.

Q. Did you make a complete appraisal?

A. I did.

Q. As of that time, of the holders, the plant, equipment, the mains and the services and the buildings, for making gas at the plants of the complainant company?

Mr. Ransom: I object to the question as incompetent and to the characterization or the conclusion that he has made a complete appraisal. If the answer has been noted I move to strike it out.

The Master: The witness has not answered.

Mr. Ransom: Well, he answered the other question.

The Master: You object to the word "complete"?

Mr. Ransom: "Complete appraisal."

The Master: I will let him state whether he made an appraisal, and I will conclude whether 40400
it is complete or not.

Mr. Ransom: Exception.

A. Yes, I can tell you it was a complete appraisal.

The Master: I will have to strike out what you said, Mr. Edgerton, but the question was limited to the one inquiry, did you make an appraisal?

The Witness: Of course I made an appraisal.

Q. And that appraisal was testified to by you in the trial of the action?

A. It was.

Q. And it was received in evidence in that action?

A. Yes, sir. 40401

Q. Did that appraisal made by you of the properties I have enumerated represent your judgment as to the fair cost to reproduce those properties as of that time?

A. Yes, sir.

Q. Less the depreciation?

A. I took off visible depreciation, only that which was visible. Where I found a building needed repair I took off about what I thought would repair it. When an apparatus was let down or out of order I took off the amount it would require to put that in repair. For

40402 Henry H. Edgerton, Direct.

instance, at 21st Street, there were 13 machines and there were 7 machines going and 6 of them laying off for repairs.

Q. You mean the generating machines?

A. The generating machines, the Lowe machines.

Q. So far as your appraisal went you did not include deductions for invisible depreciation?

A. No, sir, only that which was visible, or that which you may say was constructively visible, in one sense, because you cannot see the inside of an engine or machine, but you can judge from the time it has
40403 been in operation about what is going on. That is, take an exhauster, the outside of it may look all right, but it may leak, there may be a slip in the gas, and I had to take that into account.

Q. And you included, then, in this depreciation nothing for obsolescence or inadequacy?

A. I did in one sense in regard to the 14th Street and 42nd Street plants. I did not consider it worth anything, for the simple reason that it cost more to make gas by two hundred and odd thousand dollars than they could have bought it for.

Q. You mean two hundred and odd thousand dollars a year?

40404 A. I think it is $288,000 a year I figured it. It is in the proceedings there. I had it in the papers I handed you.

Mr. Ransom: I move to strike out the statement of the witness that it cost $288,000 to make gas there. It is incompetent, irrelevant, immaterial; the witness has no qualifications to state, and no knowledge. His knowledge certainly has not in any way been shown and it is not a competent way of proving cost.

Mr. O'Brien: We will have him give his testimony just as he gave it.

The Master: I will strike out all of the witness's statement, except that he did not allow anything for 14th and 42nd Street because he did not think they were of any value, because he believes that gas could not be made economically at those plants. Is that your statement?

The Witness: No, that is not my statement. I stated from exhibits put in by Mr. Carter—

Mr. Ransom: I object.

The Master: On the other trial? I will strike out everything he says except that he did not allow anything for 14th and 42nd Streets. 40406
You can ask him another question, if you like.

Mr. O'Brien: Your Honor, it would simply involve my going through a long number of questions and asking him these questions to develop that in the record.

The Master: Then you better do it.

Q. Mr. Edgerton, did you make a computation in regard to the cost of the production of gas at the 14th Street station?

A. I did.

Mr. Ransom: I object.

Q. I read you now from the testimony on page 3,358 of the old case— 40407

Mr. Ransom: I object to the reading.

The Master: No, that I cannot do. That I cannot permit. You want to read Mr. Edgerton's testimony?

Mr. O'Brien: Yes.

Mr. Ransom: On the ground he is dead?

Mr. O'Brien: Your Honor, this will only bring out the absolute impropriety of the ruling you have made, that you can take the testimony of dead men *in toto* into this record.

The Master: Yes, sir, but you cannot do it with Mr. Edgerton; fortunately, he is still alive and we can have him here.

Mr. O'Brien: I can ask him now whether this is a correct statement.

The Master: No, sir; I will not permit you to read the question.

Mr. O'Brien: You mean the answer?

The Master: Either the question or the answer. Because he is here and you can ask him a question, but you cannot read from that other
40409 record in the sense of saying to him, "Were you asked this question and did you give this answer."

Mr. O'Brien: It is a quick way of getting through with this record.

The Master: It is too quick.

Mr. O'Brien: Are we to be penalized because the man is living?

The Master: Yes, that is precisely the situation, if you want to put it that way.

Mr. O'Brien: But you are going to see and this very examination is going to show you the absolute impropriety of the ruling made by your
40410 Honor in taking the graveyard testimony in here.

The Master: No, I will have to take the rule as I find it. The rule is that if a witness is dead you can read his testimony; if he is alive you have got to examine him.

Mr. O'Brien: Well, it is just as good to us. We will give you something better.

The Master: All right, ask Mr. Edgerton the question.

Q. What was your answer to that question, Mr. Edgerton?

The Master: What question?

Mr. O'Brien: Whether he made a computation in regard to the cost of production of gas at the 14th Street station.

The Master: He said yes. He answered that.

A. I did.

Q. And did you compare the cost?

The Master: A table showing the cost.

Mr. O'Brien: A table showing the cost of the 14th Street station?

A. I took it right from the books of the company.

Mr. Ransom: I object to that.

The Witness: I took it right from the books 40412
of the company.

The Master: Mr. Edgerton, we will get through very much quicker if you will listen to the questions and answer them. Did you prepare a table?

The Witness: I prepared a table from—

Mr. Ransom: I object to the witness undertaking to characterize what he did.

Mr. O'Brien: Let him state his answer.

The Witness: I will state what the cost of making gas was at 14th Street, if that is what you want. Is that what you want?

The Master: No, the queston is, did you pre- 40413
pare a tabulation of any kind showing the cost of making gas at 14th Street?

Mr. Ransom: I ask for a yes or no answer.

The Witness: Yes.

Q. Is that table known as State's Exhibit ZZ?

Mr. Ransom: I object to the characterization of it; the question whether it is an exhibit in the prior case is immaterial here.

The Master: I will allow the question.

Mr. Ransom: Exception.

A. It was.

Mr. O'Brien: I offer it in evidence.

Mr. Ransom: I object to it as incompetent.

The Master: Let us see it.

Mr. O'Brien: Perhaps I had better lay a further foundation, your Honor.

Mr. Ransom: It is on page 5,963, I think, Mr. O'Brien, in the record you have.

Mr. O'Brien: I will ask some further questions about that.

Q. Will you state how you prepared that table ZZ?

The Master: That table ZZ appears to be a
40415 summary of operations of all the Consolidated Gas Companies.

The Witness: Certainly.

The Master: For 1905.

Mr. O'Brien: I am referring just now to 14th Street.

Q. Computations were made from the records of the company?

A. From the Exhibit ZZ showing the cost of manufacturing gas at the different stations of the Consolidated Gas Company. In 1905, by the way.

Q. You computed the cost to be how much?

Mr. Ransom: Objected to as incompetent, no
40416 foundation laid.

The Master: No, we cannot take it yet.

Q. Did you for the purpose of preparing this computation examine the various manufacturing records of the 14th Street station?

A. Yes, as shown in ZZ, and also I compared it with the Marwick & Mitchell report which had—

Mr. Ransom: I object to the answer as not responsive and move to strike it out.

Q. That is the report to which you referred in your earlier testimony in this case?

A. Yes. That is, I checked it off.

Q. And you had previously made up manufacturing records in the form in which they were kept at the 14th Street station?

Mr. Ransom: Objected to as incompetent.

The Master: Mr. O'Brien, I have reached the conclusion that for the purposes of this case I will not take the line of proof that you are now offering. The witness has testified that in appraising the plants in 1906 he allowed no value for 14th and 42nd Streets because he deemed them obsolete. That is the substance of it—because it cost too much to make gas there. I 40418
am not going to let you go any further into it; I do not care whether his conclusions are right or not. He did not place any value on those plants.

The Witness: That is a mistake; they are in the appraisal.

Mr. O'Brien: They are in this list of properties, your Honor. He put the valuation on them, so that their valuation would be there if they were looked upon as physical properties. Then he proceeds in his testimony to cover those plants and gives his reasons why they should be thrown out. In other words he shows how 40419
the company would be benefited financially if the places were blown up or thrown into the scrap heap.

The Master: In 1906.

Mr. O'Brien: Yes, as of the time of his examination.

The Master: Yes, that is all right, but you need not go into that here. I won't take it.

Mr. O'Brien: I have hard work figuring out the reason why the Master is—

The Master: You proceed a little ways and perhaps I will be able to show it to you. You go ahead now with something else.

Q. The Marwick & Mitchell report to which you referred so far as it covered operating results, operating expenses, gas making statistics of the several stations of the complainant company, was made up by you?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: I am trying to—your Honor
40421 you have had your testimony already on this, and I just want to refresh your mind upon it. The witness stated the part that he took. He was the engineer.

The Master: I know all about that.

Mr. O'Brien: He was the engineer in that compilation.

The Master: I know all about that.

Mr. O'Brien: And the accountants worked under his direction.

The Master: I recall that. The objection is sustained. I am not going into operating results in 1905.

40422 Mr. O'Brien: Of course, it will be necessary as our basis for the conclusion that the 14th Street and 42nd Street plants at that time were not used or useful.

The Master: We will see later on. I will not take it at this time. I will take his statement that from his investigation and knowledge of the situation he reached the conclusion that the plant was of no value as an operating plant. That stands on the record.

Mr Ransom: That is over my objection and exception.

The Master: That is over Mr. Ransom's objection and exception. Now he may want to cross-examine on that and may not, but just now I will not let you go any further into it.

Q. Mr. Edgerton, the opinion now quoted by the Master includes the 42nd Street plant, does it?

Mr. Ransom: Objected to as incompetent.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Yes, sir; I have—

The Master: As I understand the testimony now, so we will get it clear, over Mr. Ransom's 40424
objection I have allowed Mr. Edgerton to say that his opinion was in 1906 that the 14th Street plant and the 42nd Street plant had no value as operating plants because from what he knew it cost too much to make gas at those plants during that time. Is that correct?

The Witness: Yes.

Q. Was the reason which the Master ascribes to you as a basis for concluding that they should not be considered part of the used and useful property of the company—was that the only reason—

The Master: I did not say that, Mr. O'Brien.

Mr. O'Brien: Well, I do not want to take any 40425
advantage of the complainant. What I mean is, your question confines it to that reason, that it costs too much, and there were other reasons.

The Master: No, the witness said that in his opinion in 1906 the 14th Street and 42nd Street plants were of no value as operating plants. Not that they were not used, or that they were not useful, but that they had no value as operating plants. That is what he testified to.

The Witness: That is right.

Q. Was that conclusion of yours as to these two plants predicated solely upon the fact that they cost too much to make gas there?

Mr. Ransom: Objected to.

The Master: I will allow that.

A. Yes, it cost—

Q. Do you understand my question, Mr. Edgerton? Was that the only reason or were there any other reasons why you concluded that they should not be included in the rate base?

The Master: I won't let you put it that way.

404,27 He has not said anything of the sort. He said he ascribed no value to them as operating plants. You have got to confine yourself to that and not to a rate base.

Q. If there were any other reasons that you ascribed no value to them as operating plants, will you state them?

Mr. Ransom: Objected to.

The Master: I will allow it.

Mr. Ransom: Exception.

A. No, it was based on the inferior results.

Mr. Ransom: I move to strike out the answer as incompetent.

404,28 The Master: Motion denied.

Mr. Ransom: Exception.

Q. Mr. Edgerton, at that time what other plants did the complainant company have for making gas—at the time of your examination?

A. 21st Street, 28th Street, 44th Street and a nominal plant at 111th Street, the old Harlem thing.

Mr. Ransom: I move to strike that out, "a nominal plant."

The Master: I will strike out the words "nominal plant" and leave it "111th Street."

Q. What kind of a plant was that Harlem plant?

Mr. Ransom: Objected to as incompetent.

The Master: That will be allowed.

Mr. Ransom: Exception.

A. Well, the roof of the retort house was falling in I did not see—

The Master: No, was it a coal gas plant or a water gas plant?

The Witness: Yes, a coal gas plant.

Mr. O'Brien: I will let the witness state what he saw.

The Master: No, you will not. You have directed my attention to ZZ, which makes no reference to 111th Street at all and was apparently not operated in 1905. 40430

Mr. Ransom: The complainant admits it was not operated in 1905.

The Master: This exhibit to which you call my attention in the old case was made in 1905 and the plants are 14th Street, 42nd Street, 21st Street and 99th Street.

Mr. Ransom: It appears from the previous evidence in this case that the City had taken it away from the company and it was not operating.

Q. Mr. Edgerton, you made computations of your own from the manufacturing records of the 14th Street and 42nd Street plants? 40431

Mr. Ransom: Objected to as fully covered.

The Master: About what?

Mr. O'Brien: Oh, you intended to have no further examination along that line?

The Master: Yes.

Mr. O'Brien: Then I will except to the ruling of the Court and will observe that ruling in my subsequent questions of the witness.

Q. This paper called State's Exhibit ZZ—

Mr. O'Brien: You see, I come inevitably to the—

The Master: Do not state what it says.

Q. Will you state what sources the figures were taken from?

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: Objection sustained. If I have not stated already on the record I shall state now that State's Exhibit ZZ referred to by counsel for the defendant Swann purports to be a summary of operations for the calendar year 1905, of the Consolidated Gas Company of New York, and I will not take any evidence tending to show the operations of the gas company for that year, as being immaterial and irrelevant to the issue in this case.

40433

Mr. O'Brien: Yes, I see. Your Honor is conforming now practically to the ruling you made on the Marwick & Mitchell report, so far as it contained bookkeeping figures on these subjects. I do not know whether we called it to your attention at that time, but it might be called to your attention now that they really have a value in several ways in this present case.

40434

The Master: How?

Mr. O'Brien: Well, the quality of the coal may differ.

The Master: No.

Mr. O'Brien: You can make your own comparisons as to the quantity of coal that was used.

The Master: No. We have had all the years that I am going to take, and I would not take another day. I am sorry that I took as many as I did, and I repeat I would not have taken them except for the way that the pleadings presented the issue.

40435

Mr. O'Brien: These are the same old plants that are running, and if they took blank pounds of coal in the generating machines in 1905 it ought to take no more today—assuming, of course, coal of equal quality.

The Master: No, I won't get into it now. I won't take it and I will not spend a minute on it.

Mr. O'Brien: I cite that to show you in how many ways it is material. You can draw your own conclusions of the serviceability of a plant from its operating results. For instance, this morning when Mr. Hine was on the stand there was a discussion about depreciation and there 40436
was an attempt made in the discussion to try and arrive at some idea as to the present value of a plant from the question of its turning out a certain amount of gas. There was not anything said about the amount of material that might be used. You might say, for instance, as I remember the questions that were put to Mr. Hine —you said, assuming that this plant day is turning out the same ten millions cubic feet of gas as the plant did ten or fifteen or twenty-five years ago, isn't it just as good so far as the consumers are concerned? Well, the X Y Z in that proposition, or one of them, is the cost of operation. 40437

The Master: I understand that perfectly. We were on an entirely different kind of inquiry then.

Mr. O'Brien: In other words, if it is the old snorting plant that has asthma and is turning out a ten million cubic foot capacity of gas, it requires more coal, oil and labor to push it up to that limit. That has to be taken into consideration.

The Master: Yes, and then the Gas Company has to bear that expense.

404438

Mr. O'Brien: You are going to get one measure of the serviceability of the plant.

The Master: Do not work yourself tired, Mr. O'Brien, because you are simply up against a stone wall. I won't take 1905 or any part of it.

Mr. O'Brien: As to the operating results?

The Master: Yes.

Mr. O'Brien: That is a clean-cut ruling. I will take an exception, and I will save some time. That reaches out to every sort of question I can put to the dean of the gas making

404439 profession.

The Master: That I cannot say. It goes to every possible question you would ask calling for the information as to the result of operations in 1905.

Mr. O'Brien: Then for the purpose of completing the record, having asserted that I want to ask a number of these questions, so as to lay the foundation for the offering in evidence of Scott's Exhibit ZZ of the old case, I now make that offer.

The Master: That is a renewal, I think, of an offer that I have already ruled on.

404440 Mr. O'Brien: Yes.

The Master: I suppose the offer is again objected to by counsel for the complainant?

Mr. Ransom: Yes.

The Master: Yes, the objection is sustained.

Mr. O'Brien: Theoretically I have offered it.

The Master: I assume that if you were to ask the questions you would bring out from Mr. Doherty that he got these figures from proper sources. I do not know whether he did or not.

Mr. O'Brien: And that they are correct.

40441

The Master: But assuming that, I would not take it under any circumstances.

Mr. O'Brien: That they are right from the books.

The Master: Yes, if you had the books themselves here I would not take it.

Mr. O'Brien: Then I note an exception to your Honor's ruling. I will state that I had proposed if the matter was not ruled upon adversely, as your Honor has just ruled—that I would examine the witness along the same lines as indicated on pages 3358 and 3359 of the record in the old case.

40442

Mr. Ransom: I object to any such statement going on this record.

The Master: I will let him state it. I do not know what is in there, but if it is on this line, to bring out this information, it is out, that is all. If it is not on this line then Mr. O'Brien is making a mistake.

Mr. O'Brien: Your Honor, how about such portions of the examination of Mr. Mayer and Mr. Simpson as covered matters of this kind?

The Master: If they have testified to operating results in 1905 I will on your motion strike it out. I have not read that testimony because it was practically copied into the record.

40443

Mr. O'Brien: Well, we will call these things to your attention.

The Master: Yes, and I will strike it out if there is anything of that sort.

Q. Mr. Edgerton, after the appraisal which you made, will you state in brief terms the classes of property that were appraised by you in the old case?

Mr. Ransom: Objected to.

The Master: What he appraised in 1906 and testified to in the old case.

Mr. Ransom: Appraisal is not of classes of property; an appraisal must be of property. It is incompetent.

The Master: That objection is overruled.

Mr. O'Brien: I suppose the word "appraisal" carries a conclusion of law.

The Master: I will take Mr. Edgerton's answer to this.

A. The buildings, machinery and land.

Q. Holders?

A. Holders, yes.

40445 Q. Services?

A. Services, no, I did not include the services.

By the Master:

Q. Mains?

A. Mains; yes.

Q. Meters?

A. I tried to get at the meters, but there was a difference of opinion as to whether we should take the new meters or how we were to get at it.

Q. You did not appraise them?

A. Oh, yes, I figured it out, but I did not put it in for the simple reason that they wanted to take them new and I did not think that new meters should

40446 be—

Q. You did not testify to any appraisal on meters?

A. No, sir.

The Master: That is what I am trying to get at.

By Mr. O'Brien:

Q. Were the appraisals of Mr. Mayer and Mr. Simpson, so far as they related to meters, appraisals of new meters?

A. I did not see anything about—

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained; their testimony speaks for itself.

Mr. O'Brien: Exception.

Q. Mr. Edgerton, in your varied experience in connection with the gas-making business and the erection of plants, the drafting of designs, and so forth, did you select materials and labor?

A. Yes, sir.

Q. Did you make a study and examination of the prices of labor and material at various times or in the various years that you have referred to in your connection with gas plants?

A. I paid the bills. I reckon I looked into the prices. 40448

Q. And when you supervised the construction you were in touch with the various prices of labor and material in various parts of the country?

A. All over the United States.

The Master: Including New York?

The Witness: Including New York.

Q. And you knew the cost, the market costs of various classes of material that entered into building construction?

Mr. Ransom: Objected to. It does not appear that he ever did anything in New York.

The Master: I will let him say whether he did. 40449

Mr. Ransom: It is evident that he did not ever do anything in New York.

The Master: I will let him say. Answer the question, Mr. Edgerton.

Mr. Ransom: Exception.

A. What is the question?

Q. You knew the cost, the market costs of various classes of material that entered into building construction?

A. Yes, sir.

40450 Henry H. Edgerton, Direct.

Mr. Ransom: I have objected to the question as vague and indefinite.

The Master: Objection overruled, then.

Mr. Ransom: Exception.

The Master: Does that include New York, Mr. Edgerton?

The Witness: Why, certainly I include New York. I made the appraisal apply to New York.

Q. And were you acquainted with the costs of labor and material—all kinds of material that enter into the construction of buildings and plants and equip-
40451 ment, mains and services, as of the period 1905?

The Master: He did not appraise the services, he said.

Mr. O'Brien: Well, I put it in because there is reference to it in some of his testimony.

Mr. Ransom: I object to the question as incompetent.

The Master: I will exclude services because he says he did not appraise them.

Mr. Ransom: I object to it on the ground that it clearly appears that the witness has never constructed a building or a piece of apparatus or employed a day's labor in the City of New
40452 York.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. From the time I came to New York I was acquainted with all those figures. It was a necessary part of my business to be acquainted with them.

Q. And you made contracts involving these matters?

A. Yes, and bought millions of dollars' worth of materials. As engineer of the Gas Light Company of America and as engaged in building works at Providence, and entertaining the project of going into Bos-

ton, I went to Boston with it, and I was all the while doing that and that was my business.

Q. You bought materials of various kinds in and around New York?

The Master: He said so.

A. Yes, sir.

Q. During those years?

A. Yes, sir.

Q. Did you make an appraisal of the buildings?

A. I did.

Q. Of the complainant company?

A. I did. 40454

Q. Generally, what buildings were they, the station buildings?

A. Such buildings as they had. All the station buildings and—

The Master: Your appraisal was prepared in a written form of some kind, was it not?

The Witness: Yes, sir.

The Master: That paper will show what he appraised and just what articles he covered. Let us get to it.

The Witness: There it is (handing Master).

Q. Mr. Edgerton, does the pamphlet which you have just handed the Master contain all of the appraisal? 40455

A. That is a schedule of—that is a copy of the schedule, what you may call an abbreviated specification of what they had here in New York, as prepared by Mr. Mayer and handed to me to expedite the work of appraising buildings and machinery.

By the Master:

Q. In 1906?

A. In 1906.

Q. This was given to you by Mr. Mayer, was it?

A. Well, not in that shape. He gave it to me in typewriting and this is printed from it.

40456

Q. The matter is in the shape precisely that he gave it to you?

A. Yes, it is copied in the inventory they put in there—that is, part of it, what they wanted.

By Mr. O'Brien:

Q. So far as the physical property is concerned that you appraised it was set up in the list of Mr. Mayer?

A. Yes, sir.

Q. Did that list or statement give dimensions?

A. It gave all—

40457

The Master: What, the list that Mr. Mayer gave him?

Mr. O'Brien: Yes.

The Master: The thing I have here in my hand?

Mr. O'Brien: Yes.

The Master: It speaks for itself.

The Witness: It gave all dimensions except—

The Master: It speaks for itself. It shows what it was. What is the other one, the same thing?

The Witness: Those are the calculations.

The Master: Those are your calculations?

40458

The Witness: Those are my calculations.

The Master: Next question.

Q. Do the tables which are in the printed record of the old case, your tables as to these several classes of properties—

The Master: Where is that table?

The Witness: In the testimony.

The Master: You did not put that in table form?

The Witness: It is recapitulated in table form, but it is printed in the evidence.

Q. Do your tables which are set forth in the record of the prior case, entitled "William R. Willcox and others constituting the Public Service Commission, against Consolidated Gas Company" represent your honest opinion as to the fair cost of reproducing these various properties as of that date?

Mr. Ransom: Objected to as incompetent.

A. Yes and no.

Mr. Ransom: The witness's qualifications are not shown and the tables are not identified. I move to strike out the answer if it is noted.

The Master: I will receive the answer. Motion denied. 40460

Mr. Ransom: Exception.

Q. Do your tables which are set forth in the record of the prior case entitled "William R. Willcox and others constituting the Public Service Commission, etc., against The Consolidated Gas Company," represent your honest opinion as to the fair cost of reproducing these various properties, less visible depreciation, as of that date?

Mr. Ransom: Objected to as incompetent.

Mr. O'Brien: I am going to identify the tables now, your Honor.

The Master: Let us hear the question again. 40461

Q. (Repeated by stenographer.)

A. Yes, sir.

Mr. Ransom: I object.

The Master: Objection is overruled. I will take the answer.

Mr. Ransom: Exception.

The Witness: Yes, I was going to say—

The Master: No, do not say anything more for a minute.

Q. You included at that time a certain item for paving over mains, did you not?

40462 Henry H. Edgerton, Direct.

A. Not in this (indicating book). This is nothing about mains.

Q. No, but in your testimony you did.

A. Yes.

Q. What was the amount of the estimate, your estimate of paving over mains?

A. $2,888,000, I believe it was. I have not the exact amount. $2,880,000. I do not remember the odd thousands.

Q. And where on page 3,042 of the record in the prior suit already named you refer to 14th Street and
40463 42nd Street and set figures opposite it, was it with the intention of including them in the properties of the company?

Mr. Ransom: Objected to as vague and incompetent.

The Master: That objection will be sustained. He has already testified what his opinion was. I find on that page referred to, page 3,042, a value of all plants, January, 1907. I take it from what you have asked the witness that that is the statement that you have in mind as to the value he gave of those plants.

Mr. O'Brien: Yes, as of that time.

40464 Q. It is as of that date, is it, Mr. Edgerton?

The Master: January, 1907?

A. No, the appraisal was made before that. That is the time it was tabulated, and I suppose the date it was tabulated was put on there.

Q. The appraising had been going on for six months prior to that?

A. Yes.

Q. Or four or five months?

A. Yes, it had been going on—

The Master: For some time?

The Witness: Yes, sir, and during September, my recollection is

Q. Will you turn to the pages of the prior suit that contain the tables covering your appraisal?

A. It extends from page 3,642 to 3,746, the details. By the Master:

Q. As I understand your testimony, Mr. Edgerton, on page 3,642 you gave the reproduction cost of the various plants, less visible depreciation, did you?

A. Yes.

Q. Do not give us the figures; but is that right?

A. The depreciation, taking off of each—

Q. There, those figures there, taking for instance the figures you set opposite 14th Street, was the figure 40466
you gave for reproduction cost, was it?

A. Yes, new, less visible depreciation.

Q. No, your visible depreciation apparently comes down—

Mr. O'Brien: That is in each item, your Honor.

The Master: Oh, it is enumerated in each item?

Mr. O'Brien: It is enumerated in detail and it is all included in the following pages.

Q. Glancing further on, at page 4,653 I see, referring to the office building, "Cost as per Mayer," a figure, and then "Depreciation due to physical de- 40467
terioration as per Edgerton."

A. I accepted, on account of the short time in making up these appraisals—that is, the actual work—I accepted Mayer's appraisal.

Q. Well, Mayer gave costs, apparently, and not appraisal as reproduction; then you took depreciation from that. That is entirely different from what you said here a minute ago.

A. I don't know; we get everything mixed up here.

Mr. O'Brien: Mayer had the reproduction cost, your Honor.

The Master: I do not know anything about that.

Mr. O'Brien: The witness has used all the way through these various tables the word "cost."

The Master: I won't assume that and won't take it unless—

Mr. O'Brien: I will ask him.

The Master: No, I won't let him characterize Mr. Mayer's testimony. I will ask Judge Ransom whether it is the fact, to save time. Do you know, Judge Ransom?

40469 Mr. Ransom: I understand it is not.

The Master: That Mayer's figures were not reproduction costs?

Mr. Ransom: Well, reproduction costs, that is a different thing. I understand Mayer's figures were reproduction costs, yes.

The Master: That would be all right. Then the witness is consistent. He took Mayer's figures on reproduction cost instead of his own.

The Witness: I did not have time to go through all this.

The Master: You need not apologize; we want to get the record straight, that is all.

40470 Mr. Ransom: The difference between cost and reproduction cost as it has been used in this case—

Mr. O'Brien: The witness has been using that word in this case without the word "reproduction."

The Master: The witness testified that he took as his valuation the reproduction cost less visible depreciation.

Mr. Ransom: Yes.

The Master: Then looking further on I notice items here to which he referred, and as included

in the pages to which he has just referred, "Cost as per Mayer." I assumed that meant actual reproduction cost. If the witness took Mayer's reproduction estimated cost, then I will let him put in these pages as showing just what he did. It gets down to the fact that he took off depreciation on Mayer's reproduction cost at that time.

Mr. O'Brien: Yes.

The Master: All right, proceed.

Mr. O'Brien: That was understood.

The Master: I have it clear.

By Mr. O'Brien: 40472

Q. Mr. Edgerton, where you use the word "cost" in reference to these appraisals of these buildings and various properties, it was in all instances reproduction cost?

A. New.

Q. Reproduction cost new?

A. Yes.

By the Master:

Q. And that is what Mayer did?

A. That is what Mayer did.

Q. So far as the items that Mayer appraised here were concerned, you took off depreciation, visible depreciation from his reproduction cost? 40473

A. Yes, anyone can see that.

Q. Here, for instance at 3653, "Office Building Cost as per Mayer, $1,781." That is already in the record, so I am not doing any damage in repeating it. Then you say, "Depreciation due to physical deterioration as per Edgerton," giving the per cent and amount?

A. Well, I could tell that without figuring it out.

Q. That is what happened, isn't it?

A. Yes.

Mr. Ransom: But look at that item there. Is that 40 per cent of that (indicating)?

40474

The Master: I do not know.

The Witness: Yes, there were things that had 40 per cent and 50 per cent.

Mr. O'Brien: We will give you some very illuminating testimony on that. I judged from the questions you were asking today that you wanted that.

The Master: Put the next question. How far did you say that went? Page what?

The Witness: 3746.

40475 Mr. O'Brien: Your Honor, I will offer it in evidence at this time, as representing the appraisal made by Mr. Edgerton, and with the provision that we are not assenting to the 14th Street and 42nd Street plants.

The Master: You cannot do that. You can offer his appraisal as it stands, in the light of his testimony.

Mr. O'Brien: Well, that will be quite satisfactory, as set forth in the tables on page 3642—

The Master: Beginning with the word, "Consolidated Gas Company value of all plants, January, 1907."

40476 Mr. O'Brien: Yes, down to the middle of page 3746.

The Master: And ending with the words, "Mr. Mayer gives the value of above brick tank and foundation as $17,984." You offer that in evidence?

Mr. O'Brien: Yes.

The Master: As the appraisal of Mr. Edgerton, made prior to and put into this statement in January, 1907?

Mr. O'Brien: Yes, I offer that.

40477

Mr. Ransom: I object to it as incompetent, irrelevant and immaterial, the qualifications of the witness in no way shown, on the ground that it appears from the testimony that Mr. Edgerton never constructed a building or installed a piece of apparatus, or employed a day's labor in the City of New York. And if there is any doubt about the present record showing that, I ask leave to ask him just those few questions.

The Master: I do not think that is useful, in view of the very positive statements made by Mr. Edgerton. The objection will be overruled.

40478 Mr. Ransom: I am referring to the statement now appearing at page 5320.

The Master: You are referring to something the Master said in the other case, aren't you, the Master's comments?

Mr. Ransom: The reference in the testimony in the Circuit Court is page 1520.

The Master: I am passing on the record as it appears here.

Mr. Ransom: I ask leave to ask the witness a few questions.

The Master: No, I won't allow it.

40479 Mr. Ransom: You won't allow me to cross-examine him as to his qualifications or lack of qualifications?

The Master: No; the objections are overruled, and the tabulations will be received in evidence as Exhibit AA-467.

Mr. Ransom: That is a couple of weeks more.

The Master: Well, I cannot help it. You put in Mayer's appraisal, and I will let Mr. Edgerton put in his, then I am going to disregard both of them, probably.

Mr. O'Brien: Your Honor, I want to abbreviate this examination by referring to the tables on mains, but I guess I would have to take it in the testimony, unless you will let me have time until tomorrow.

The Master: Do you want to go ahead with something else?

Mr. O'Brien: I could take up something else.

The Master: Well, do that then. You can put in the mains on Monday, I won't sit tomorrow.

By Mr. O'Brien:

40481 Q. Mr. Edgerton, can you state for the information of the Master the method used by Mr. Mayer in the appraisal of the holders?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. In what respect did the methods used by Mr. Mayer in appraising the holders differ from yours, if in any?

Mr. Ransom: Objected to as incompetent.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you state what method you adopted in ap-
40482 praising the holders, how you took your dimensions or computed the factors in appraisals?

Mr. Ransom: Objected to as incompetent, immaterial and irrelevant, the witness lacking wholly in qualifications.

The Master: Objection overruled.

A. It is a well known method to weigh gas holders.

Mr. Ransom: I move to strike out the statement of the witness.

The Master: Strike it out. Mr. O'Brien wants to know what you did.

40483

The Witness: I weighed every gas holder. I weighed it by the weight of displaced water, measuring the pressure given by the weight of the holder on the gas as minutely as possible, and making corrections for the levity of the gas in the holder, the amount of the water in the seals, in the cups that sealed it, the amount of submersion iron that would have to account for, and thus deduced the weight of the holder in position.

Q. Did you use, in appraising the reproduction cost of the holder, arithmetical or weighted averages? 40484

A. Weighted averages. An arithmetical average would lead to error.

Mr. Ransom: I move to strike out the statement the arithmetical average—

The Master: No, I will take it.

Mr. Ransom: Exception.

Q. In the Gas Engineering World what was the generally recognized method of appraising holders?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Will you state whether or not in your opinion a correct appraisal of the cost of a holder can be made if you use an arithmetical average? 40485

Mr. Ransom: Objected to as incompetent.

The Master: I will sustain that objection. I think this is a question of law.

Mr. O'Brien: Exception.

Q. Did Mr. Mayer use arithmetical averages?

Mr. Ransom: Objected to as incompetent.

The Master: That has already been ruled out.

40486 Henry H. Edgerton, Direct.

Mr. O'Brien: It might not be apparent to your Honor going through the testimony.

The Master: I have got to take Mr. Mayer's testimony, and I cannot let Mr. Edgerton tell me what he said or what he did.

Mr. O'Brien: Well, if left to yourself, you would be here all summer.

The Master: All right.

Mr. O'Brien: You have to figure those things out.

The Master: All right. I shall probably dis-
40487 regard all of these estimates of value in 1906.

Mr. O'Brien: You won't permit me to call the witness's attention to the testimony of Mr. Mayer and bring out the method which he used?

The Master: No.

Mr. O'Brien: Exception.

Q. Mr. Edgerton, you have, we may assume from your testimony, seen and examined generating machines making gas in various parts of the country, including New York City?

Mr. Ransom: Objected to.

The Master: That will be sustained as fully covered.

40488 Mr. O'Brien: It is only a preliminary question.

Q. Mr. Edgerton, what types of generating machines were in use at the time of your examination in 1906 of the plaintiff's plant?

Mr. Ransom: I do not see the materiality of that.

The Master: I don't either, but I will allow it.

Mr. Ransom: Exception.

A. Well, in 14th and 42nd Street they used enriched coal gas, manufactured the enriching gas at

21st Street for the 14th Street plant, and at 42nd Street they manufactured the enriching gas at 42nd Street.

The Master: The question just called for the types of generating apparatus.

The Witness: The types of generating apparatus was the Lowe process in 99th Street, 21st Street and 44th Street.

The Master: Coal gas at 14th and 42nd?

The Witness: Yes.

Q. Taking into consideration your various experience with the various kinds of generating machines, your knowledge of how they are constructed, your experience with their use under various conditions and circumstances, what, in your opinion, is the average life of the several kinds of generating machines? 40490

Mr. Ransom: Objected to as incompetent and immaterial.

The Master: I will allow it.

Mr. Ransom: Exception, too vague, generally indefinite.

A. The life of the different machines is quite different. Those machines that are under fire and heat up to white heat during their operation, deteriorate rapidly, and have to be repaired. Other parts of the apparatus have got considerable lifetime as, take a purifier apparatus, that has got only— 40491

The Master: The question only referred to generators. What is the life of the Lowe generating sets?

The Witness: Oh, the Lowe generating sets at the time I was with the United Gas Improvement Company, they considered nine months as the average life of the linings and checker brickwork.

The Master: You have already said that each of these things require repairs because of the fact that they have very high heat. Having in mind, the necessary repairs that you have got to make to the generating set being used throughout the year, how many years will it last, in your opinion?

The Witness: I will say that parts of it will last nine months.

Q. Take the machine as a whole?

Mr. Ransom: I move to strike out the answer
40493 as not responsive.

The Master: I will strike it out. Talking of the machine as a whole.

The Witness: Who could answer such a question as that?

The Master: I am sure I don't know. If you say you cannot answer it, say so, say you can't answer it.

The Witness: I could answer every detail of it, but you have me in such a shape that nobody in God's world could answer it.

The Master: Well, then, I will have to strike out Mr. Hine's testimony, he answered it very
40494 literally.

Q. Have you ever known, giving instances in your experiences, where, taking each type, of a generating machine that has gone out of business—

The Master: No, I won't take that, the question is not allowed.

Mr. O'Brien: Well, if I use the word "expired," your Honor.

The Master: No, I won't take that. I will let you ask Mr. Edgerton any proper question calling for his opinion. You have asked him for his opinion as to how long a Lowe gener-

ator set will last, and he says he cannot answer that question, the only way he can answer it is to take the various parts of a generator set and tell you how soon that has got to be repaired.

Mr. O'Brien: That was to be the basis of his opinion as to the whole generator.

The Master: Well, I won't take it that way.

Q. Well, Mr. Edgerton, I will go back to the water gas in a minute. What is the life, in your opinion, of coal gas generating equipment?

The Master: I do not think I will take it. The case has been made here upon the basis of the life of a plant. Now, I am going to let you ask Mr. Edgerton what in his opinion is the life of a coal gas plant. 40496

The Witness: How long will a man live? It all depends on—the life of all the different component parts of a gas plant differs.

The Master: We know that.

The Witness: They differ very greatly.

Q. Take the retorts, what life would you give them?

A. Three years, that is an average lifetime.

The Master: You mean then they have got to be retired? 40497

The Witness: They have got to be thrown away.

The Master: The whole retort?

The Witness: The whole retort, everything pulled out down to the bottom, down to the ash pan, everything pulled out of the arch.

The Master: So, if you are operating a coal gas plant, you practically have a new plant every three years?

The Witness: All the gas making apparatus, that is the manufacturing, three years is a good

fair average. I have run them five years, but then it does not pay.

The Master: Then let us have it that way. What is the next item in a coal gas plant.

Q. Does that include the brickwork, the brick arches?

A. No, the stack, what is called the stack is very rare't more durable, and the stack is not under fire directly. It is racked at times. What I include in three years are the retorts and the arch tile that holds the retorts, that braces the retorts, the saddle tile,
40400 and the flue covering tiles and the brickwork all around the furnace and in case of the regenerative furnace there is a little duration in a regenerative furnace. The fire where you have the regenerators, the heated gases do not rise to the high temperatures that they do inside the retort sets.

The Master: Don't let us get away from it. Now, take the next item in the coal gas plant. I will let you go into that, taking each element in both coal and water gas plants.

Q. By the generating fires you mean down below?

A. The generator fire is below, but it burns at a
40500 low temperature. There isn't near anything like the amount of wear and tear on a generator that there is on a retort set.

Q. Well, take the rest of the brick work.

A. The stack. Well, the stack gives way in the tierods within a few years, and you have to brace them or tie them, but a stack may last 20 years, but 12 years would be a better average, because you are losing money if the stack gets leaky, if it is cracked and draws in air, and it burns up your gas and wastes.

40501

The Master: I can't take all of these complicated explanations.

Mr. O'Brien: It is very clear, your Honor.

The Master: No, the witness has got to answer, giving precisely the life, without explanation now. Take your next item.

Q. Well, would any part of the rest of a coal gas plant have a longer life than that you have ascribed to those parts?

A. Yes. Parts of it would last forever if you did not pull it down to get rid of it.

The Master: Now, let us go to a water gas 40502
plant.

Q. You mean by improvements in the art?

A. Yes, progress; you have got to pull a thing to pieces because it is out of date.

Q. Well, taking the water gas sets, you began to speak a few minutes ago about those parts of the water gas sets that were immediately directly subjected to the influences of the fires.

The Master: They burn out in nine months, have to rebuild them in nine months. What is that? What is it that burns out in nine months?

The Witness: Well, it is the lower part of the lining of the generator, and the checker brick 40503
work falls out and has to be renewed more oftener than nine months. That you can get at. But you have to have a general overhauling of all the refractory material inside of the Lowe process generator and superheater at least once in nine months.

Q. Well, the shell—

A. (Interrupting.) Mr. Woods says 800—

The Master: Don't tell us what Mr. Woods says we are trying to find out what you say.

The Witness: Well, I say nine months.

The Master: Well, now, what other part goes out quickly?

The Witness: Of the generator?

The Master: Of the water gas plant?

The Witness: Well, the valves. The valves are water jacketed, and sometimes they stop and burn out the valves, burn out the iron, the iron burns out on top whenever a brick or tile falls out, and the fire gets access there and it burns it out in no time.

The Master: Then it has got to be replaced?

40505 The Witness: Yes, the same way down around the bottom, it is very apt there to corrode through access of the fire because of the tremendous amount of heat.

The Master: That has got to be replaced?

The Witness: Yes.

The Master: What else?

The Witness: Well, grate bars, if you use them at all, have got to be replaced frequently, and also the connecting pipes.

Q. How about the shell?

A. Well, the shell is the most—the round part of the shell, unless fire gets access to it, the bricks drop 40506 out, it will last quite a while.

Q. Well, how long would you say, on an average?

A. Well, I have seen patched ones that lasted ten years and longer. Patched up they become leaky and comparatively wasteful.

The Master: Is there any part of the water gas plant that lasts any considerable period of years at all?

The Witness: Well, the connecting pipes that are buried in the ground, and some of those above, will last—I suppose they will last, unless

they are pulled out, they will last until they are pulled out.

The Master: What else will last a long while now, the holders?

The Witness: No, holders—

Q. (Interrupting.) We are speaking about the shell. So that what would you say of the generator machine as a whole?

A. Well, as a whole—

The Master:- I take it that Mr. Edgerton says that they are pretty nearly a new generator machine every two or three years, don't you? 40508

The Witness: Well, you have several parts of the shell. As I say, around the fire doors—

The Master: We will adjourn until Monday at 9:30.

Adjourned to Monday, February 23, 1920, at 9:30 A. M.

40509

40513

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.*

Before: Abraham S. Gilbert, Special Master.

New York, February 23, 1920.

Met pursuant to adjournment.

Present: Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.
Mr. Chambers, of Counsel for Defendant Newton.
Mr. Hayward, Mr. Clark and Mr. Neumann, of Counsel for Public Service Commission. 40514
Mr. O'Brien, of Counsel for Defendant Swann.

Henry H. Edgerton, resumed the stand.

Direct-examination by Mr. O'Brien:

Q. Mr. Edgerton, you have had a lot of experience with mains in your lifetime?

A. I have. 40515

Q. What would you say was the average, considering the conditions under which mains are laid in New York, was the average life of mains?

Mr. Ransom: I object to it as incompetent, no qualifications shown.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. Taking into consideration all of the conditions under which the complainant company carries on its distribution system?

40516 Henry H. Edgerton, Direct

A. Well, I made an analysis of that, and I made some deductions from it, but I haven't the details here at this time.

Q. I am not asking you about your appraisal yet, as to the mains; I thought we had better continue the subject we finished with on Friday, so as to make it complete in the record?

A. Well, as to what I should call the depreciation on mains, I found that they took up 400—

Mr. Ransom (interrupting): I object to the answer, it is not responsive, the witness should
40517 not be permitted to wander.

The Master: Yes, Mr. Edgerton, the question is—

Mr. O'Brien: If you will take the statement, you will find it responsive.

The Master: We will have to limit it. The question is what in your opinion is the average life of mains in New York City, laid as you understand them, or at least based on your knowledge of the distribution system of the Consolidated Company, what would you say was the average life of the mains system?

The Witness: I say that I figured that out—

40518 The Master: Well, how much is it, 50 or 60 or 70 years?

The Witness: Well, it don't come down to the years, but it comes down to the percentage of pipes taken up and the amount of pipes laid down of the same size which—

Mr. Ransom: I object to the wandering answer.

The Master: I will have to take it, I guess.

The Witness: There was 408 miles of mains—

Mr. O'Brien: He is giving the basis, he is giving the testimony of your own witnesses.

The Master: I don't want him to give the testimony of their own witnesses.

Mr. O'Brien: He can state whether it is the basis of his own opinion.

The Master: I don't care what the basis of his opinion is. If he can give the opinion, I will take it.

Q. Mr. Edgerton, taking into consideration all of the conditions under which the complainant company is conducting the distribution of gas, the allowances for obsolescence and inadequacy and all causes, wear and tear, improvement in the art, what would you 40520
consider the average life of mains to be?

Mr. Ransom: That is over my objection.

The Master: Yes.

The Witness: Well, viewing the mains—the statements in regard to mains, and my experience in regard to mains, my knowledge and my experience elsewhere that mains are not as permanent as has been supposed. I know of my own knowledge of—

The Master: Now, you have got to stop.

Q. (Interrupting.) That can come afterward, Mr. Edgerton. Give us what you believe to be the average life of the mains?

A. Oh, I would say there is no average life, unless you know the conditions, you have got to have the conditions to give the average, and I was trying to state it, but of course if I cannot state it, I can't. 40521

Q. Well, you can give your reasons afterwards. You take into consideration in formulating an opinion about the complainant company's mains the number of mains that are removed for one cause or another, the condition of the mains as you have witnessed them, and the wear and tear that you know that mains suffer by reason of being in the ground and under the conditions in which they are laid, do you?

A. Well, I say I figured that out, and I haven't the date here, except to go over it in detail in my mind, just as I remember it, and that is to say that a large number of miles of mains were taken out here, old mains, and new mains of the same size substituted, so that cuts out any theory about their being substituted on account of being too small, the old mains being too small. I have those figures worked out, and I will have to do it again. That is necessary to form any statement in regard to the depreciation on mains here.

Mr. Ransom: I move to strike out the rambling
40523 answer as not responsive and incompetent, the witness undertakes to state a lot of things that are not possibly of his knowledge.

The Master: I will deny the motion. See if Mr. O'Brien cannot get an answer to his question and get it on the record.

Mr. Ransom: Meanwhile the witness wanders all over the record.

Q. You are acquainted with the soil, the average conditions of the soil, subterranean conditions of the I that exists in the City of New York?

A. Yes, a good deal of it.

The Master: Let me ask a question. Don't
40524 you recall the conclusion that you reached? You reached a conclusion, didn't you, based upon the figures that you had.

The Witness: Yes, I reached a conclusion.

The Master: What was that conclusion as to the life of mains?

The Witness: Well, the conclusion was that in taking up these mains and substituting mains of the same size I threw out all those mains that were duplicated of the same size, because the mains that were taken out must have had something the matter with them, and did have, as I see it.

Mr. Ransom: I move to strike out his statement that the mains that were taken out—

The Master: Objection overruled. Motion denied.

Q. And that conclusion was predicated on the testimony in the record in the original case of what witness?

Mr. Ransom: Objected to as incompetent, he has no right to characterize the testimony of other witnesses.

The Master: I won't take that. What I am trying to get, and what I assume you are trying 40526
to get, Mr. O'Brien, is whether he is or is not able to say, from all that he knows about the street main system in New York, that the main system, the mains as a whole, have or have not an average life, and if so, what it is. Now, you tell us that.

The Witness: Well, I was trying to.

Mr. O'Brien: I will defer that until he gets his tables in.

The Master: No, I want to get it now, and I will not waste any more time. He has got to tell us if he has a conclusion, and if he has not, I am not going to waste any more time on it, I am going to cut it out. I know your difficulties, and 40527
I am going to try to get it for you.

Mr. O'Brien: But your Honor, the computation that he made upon which his opinion was in part based—

The Master: I don't care a thing about it, I am going to find out now whether Mr. Edgerton is able to say as an expert, and give any opinion as to the average life that mains have, and if he is not, we will pass along to something else and I won't come back to it, that is all.

The Witness: Well, on the average life of mains, I have had to have a basis to go on, and I was trying to state my basis.

The Master: I don't care about your basis, give us your judgment.

The Witness: As to the percentage—

The Master: No. Some witnesses say the life of mains is one hundred years. What do you say it is?

The Witness: I say, so far as that is concerned, that cast-iron, under certain conditions may last a
405,29 hundred years, but these mains have not lasted a hundred years.

The Master: I don't care what they have lasted. I can see that from the record. You are asked for an opinion, so that depreciation charges can be made on it, as to what the average life of mains is. Now, you are not expected here to sum up and summarize this testimony. I have got to do that. If you have any opinion as to the average life of mains, I will take it.

Mr. Ransom: Over my objection and exception.

The Master: Yes.

405,30 The Witness: I have taken up miles of mains on account of depreciation and pitting of the mains.

The Master: I am going to strike that out. Are you going to tell me, or aren't you, Mr. Edgerton, whether you think one hundred years is the average life of mains?

The Witness: It is far from that. There is no place—

The Master: Well, is it ninety years?

The Witness: You cannot put it into years, Mr. Gilbert.

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The Master: Now, come to the next question.

The Witness: It cannot be put into years unless you get a special case.

Q. You mean to be mathematically correct about a given company?

A. Certainly.

Q. You would want to study the conditions of that company, to lay the foundations in the form of conditions as you found them, for a particular company?

A. Certainly. They vary.

Mr. O'Brien: Well, I will take that up later.

40532

The Master: No, we won't take it up later.

Mr. O'Brien: Well, I submit that I be given permission to bring out this in my own way.

The Master: Go ahead.

Q. Have you ever seen any of the mains of the complainant company taken out of the ground?

A. I saw, I should say, miles of broken mains taken up and strewed around the streets. I remember in one case, I think it was the foot of 14th Street, that there was piles of mains that I examined there, I calipered and found out the thickness of them, and went into the yards uptown where somebody had rented from the company a lot of space, there were a pile of mains there which I examined. Of course, the depreciation was in several lines—

40533

Mr. Ransom: I object to the wandering statement of the witness, there is nothing to show that these mains were—in the first place that they were Consolidated mains; there is nothing to show what—

Mr. O'Brien (interrupting): Well, he is swearing that they are.

Mr. Ransom: The subway contractors dug out a lot of mains.

The Master: I won't take this testimony. Objection sustained.

Mr. O'Brien: Exception.

Q. Did you know that these were the mains of the Consolidated Gas Company?

A. Why, yes.

Mr. Ransom: Objected to as incompetent.

The Master: Yes, I will sustain the objection.

Mr. O'Brien: Well, your Honor, I do not know anything that could be more definite than telling you.

40535 The Master: I am ruling it out generally on the ground that the fact that this witness saw mains which had been taken out, and which were old or broken or discarded, is not at all relevant to this issue.

Mr. O'Brien: He is going to give you the conditions of the mains.

The Master: I don't care anything about it. I shall rule it out as being irrelevant.

Mr. O'Brien: Exception.

Q. Have you ever seen the mains of the Consolidated Gas Company which have been in the ground in a pitted condition?

40536 Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have the mains of the complainant company suffered from electrolysis?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, I cannot conceive of your making these rulings. The witness, unlike other witnesses, like this theorist Allison, is giving you a basis in fact, in concrete fact, for his opinion, and because he has urged his right

to present these concrete facts first before giving you the conclusion, I cannot see why it should not be admitted.

The Master: I will sustain the objection.

Mr. O'Brien: He does not come in here like Messrs. Miller and Allison and give you something that shocks the sense of fairness and the judgment of experience; he is giving you concrete facts with respect to this company.

The Master: Well, I won't take that. I will take his opinion, and he says he cannot give it.

Mr. O'Brien: Well, he was speaking about his 40538
judgment, and what his investigation of the particular company was, when you asked for a general opinion.

The Master: I won't take this evidence.

Q. Taking things in general, as to various gas companies, Mr. Edgerton, would you say that the mains system would have a longer life than fifty years, on an average?

Mr. Ransom: Objected to as incompetent, contradicting the testimony of the witness Little.

The Master: I will allow it.

Mr. Ransom: Exception. Contradicting the testimony of his own witness. 40539

The Master: I will take it.

The Witness: I say I have taken out and replaced mains in various places where I went—

The Master (interrupting): I will strike out that answer, I am not going to have that, I am going to get an answer from Mr. Edgerton, he has got to answer the questions, and I will strike out that answer as not responsive. I have reached the conclusion that the only way to get this testimony is to hold Mr. Edgerton to the rule the same as any other witness, he has got to be held, you have got to answer questions.

Q. Well, I repeat the question, Mr. Edgerton, and you give us your best judgment as to what you believe, taking into consideration the various conditions under which mains are laid, to be the average life of gas mains, if you believe it is a certain number of years?

A. There is no such thing as an average life. I would not believe a word of that average life business.

Q. Well, what do you believe to be the—if you were taking the system of the Consolidated Gas Company, is there any mains that you know of that have been in the ground seventy-five years?

40541 Mr. Ransom: Objected to as incompetent, the qualification of the witness is in no way shown, he cannot tell.

The Master: I will sustain the objection. Now, I understand, Mr. Edgerton, you say that there is no such thing as average life of mains. You have got to determine the life of the mains by the actual facts as they exist as to just what has happened, as to what mains have been taken out and what mains have been put back, that if mains of the same size have been put back to replace mains taken out, for instance, six-inch mains have been put in where six-inch mains have been taken

40542 out, that is evidence, he says, that the mains taken out were no good, were old, were rotten, or spoiled by electrolysis, or something else.

The Witness: Yes, now you have got it.

The Master: I have got his argument, and I will analyze the evidence. I do not want Mr. Edgerton to do it for me.

Mr. O'Brien: Well, the point is this, that Mr. Edgerton—

The Master (interrupting): The witness interrupts my statement by saying that is right, you have got it right. I understand him perfectly.

Mr. O'Brien: He has made a statement that he hasn't got his papers, in which the concrete premises of his conclusions with respect to this company were worked out, and I will ask permission to recall him and have him testify after he gets that paper.

The Master: There is no necessity for it, I have Mr. Edgerton's testimony perfectly.

Mr. O'Brien: But you haven't anything that gives you anything definite.

The Master: I have the same thing that he has.

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Mr. O'Brien: The fact of the matter is that the questions that I want to address to the witness you have barred, that will bring out the full story and his whole opinion.

The Master: All right, go on.

Mr. O'Brien: Now, you do not give his whole opinion on the record when you paraphrase it the way you do, although he said, yes, to the last statement made by you.

The Master: Well, Mr. Edgerton knows perfectly what he means to convey. Mr. Edgerton says that I understand him. Now, go on with something else.

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Mr. O'Brien: Well, I ask that privilege, your Honor, to recall the witness as to depreciation on mains after he has gotten the paper which he had prepared, being an analysis of the testimony and from his own experiences with the mains system of the complainant company.

The Master: Well, go on, let's get something else now.

Q. Now, Mr. Edgerton, taking your experience with holders, gas holders, what are the usual causes for discarding holders by gas companies?

40546 Henry H. Edgerton, Direct.

A. Well, in a number of cases that I have examined, the ammonia left in the gas in imperfect purification, has affected the crown of the holders and eaten from the inside, so that I saw in one case a holder so leaky in the top that they had tarred brick and put them down over the holes to keep them going. That is one cause of depreciation.

The Master: Where did you see that?

The Witness: That was in Mobile.

The Master: I am not going to receive that, Mr. O'Brien. I am going to let this witness say
40547 that ammonia in gas will cause deterioration of holders, and that is all I am going to let him say.

Q. And what other causes?

The Master: What else causes depreciation or deterioration.

Q. Or affects the life?

The Master: Failure to paint the outside?

The Witness: Yes, if you paint the outside properly and keep it painted you can extend the lifetime of a holder, but I say this, that in a great many cases I have seen paint put on, and recently put on, where it blistered up and did not protect
40548 the holder, did not protect the iron.

The Master: Yes. The answer is stricken out except the words "failure to paint properly will cause deterioration." Now, what else will cause deterioration in holders?

The Witness: Well, the settling of a holder, keeping a holder so nearly full of gas and letting it stay there some time causes an oxidation at the water line.

The Master: Now, what else?

Q. Does obsolescence or age, or change in the art, or inadequacy, affect the life of the gas holders?

A. Oh, holders are continually going out of use on account of being too small, as business increases.

The Master: Now, ask him what in his opinion is the average life, considering all these elements.

Q. Are you acquainted with the holders of the complainant company?

A. Yes, sir.

Q. You have examined them from time to time?

A. Yes, sir, during the old case and after. I remember that Mr. Rowland testified to taking them apart and putting them together. 40550

Mr. Ransom: I object to the wandering statement.

The Master: That is an answer, yes. Next question.

Q. Now, have you ever seen the holders of the complainant company taken apart?

A. I did.

Q. Where?

A. At 44th Street, four holders.

The Master: That is an answer.

The Witness: Were all taken apart.

Q. About what time?

A. That was in 1878, they were comparatively new holders. 40551

Q. What condition were they in?

Mr. Ransom: Objected to, prior to consolidation.

The Master: Objection sustained. Now, do you want to ask him what he thinks the average life of a holder is?

Mr. O'Brien: Yes, I am coming to that, your Honor.

The Master: Well, let's get to it.

40552 Henry H. Edgerton, Direct.

Q. You are acquainted with and you have examined the holder of the complainant company at Kingsbridge?

A. Yes, sir. No, not examined that inside, no. I examined the accounts of the operation of the holder at Kingsbridge.

Q. And how long do you think that will live?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. I will let you ask the witness what in his opinion is the average life of a gas holder properly maintained.

40553 Q. What in your opinion, taking the Master's question, Mr. Edgerton, and the conditions that obtain in and around New York City, would you say would be the average life of gas holders?

Mr. Ransom: Objected to as incompetent.

The Master: No, I will take it.

A. There is no such thing as an average life of a holder, no such thing, it is according to the circumstances under which it is placed and the way the business is carried on and the constituents of gas, and a good many circumstances that put a holder out of use.

The Master: Well, now, this is an answer to

40554 that question.

The Witness: Sometimes they blow out. I have known them to blow up and uncup.

Mr. Ransom: I move to strike that out, that they blow up.

The Master: I shall let the statement stand, everything is possible, a gas holder may blow up.

Q. Do you know any holder of the complainant company that was in existence fifty years ago that is standing and in use today?

A. No, I do not.

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Q. Do you know any holders in this country anywhere, any gas holders, that were erected longer than fifty years ago, that are in existence and in use today?

A. Not to my knowledge. I have seen holders displaced and put out of use everywhere I have been, even in small plants.

Q. Have you seen any of the holders of the complainant company put out of use beside the one you mentioned at 44th Street?

A. Small ones were put out of use.

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Q. What is that?

A. I say the small holders are either changed or put out of use.

Q. At what stations, if you remember?

A. 14th Street stations were out of use in 1906, when I saw them and appraised them.

Q. And what other station?

A. Well, that 18th Street station, where they had a holder that had a lean of about eighteen inches, and it was condemned by the City.

Mr. Ransom: I move to strike that out, that is not an answer it is another wandering statement.

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Mr. O'Brien: No, it is a positive statement.

The Master: I will sustain it. Mr. O'Brien, I am going to rule that I will not take any further evidence of particular holders having been taken down.

Mr. O'Brien: Well, your Honor, this all bears upon the question of depreciation, the concrete facts will speak for themselves, and here, as he says, was a holder that was eighteen inches out of plumb and was taken down under the order of the City.

40558 Henry H. Edgerton, Direct.

Mr. Ransom: Was taken over by the City, the City took the plant.

Mr. O'Brien: He is talking about the 18th Street plant.

Mr. Ransom: That is what I mean.

The Master: Purely in the interest of time, because I do not see that it relates to any issue in this case to prove that particular holders were or were not taken down at particular times, and what their condition was when they were taken down, and I shall rule out all further inquiry on
40559 this line. The record shows, the books of the company show and the testimony shows that certain holders were at certain localities and at certain places, and that certain of them have been discarded, written off and taken out of capital account, the record shows precisely when that happened, and I would rather take the record as it is than Mr. Edgerton's recollection of those particular things. I do not think it helps us any. Mr. Edgerton has explained his views about holders, and his view about holders is very much in line with his views about mains. A holder properly cared for will last 40 years, another
40560 holder of the same size, because of some peculiar condition of location or care or something else that may happen to it, will last twenty years, and he says there is no average, and I am going to take his opinion on that subject. Now, let's get to something else.

Q. What causes services usually to be discarded?

A. Services are discarded owing to the increase in the use of gas for various purposes, because they are too small a great many services turn out to be too small for the use they are put to, and a great many of them are affected by electrolysis, and I know—

The Master: Don't tell us what you know. You know that some of them, or many of them, are affected by electrolysis, and that is all I want, and you do not have to prove your statement, Mr. Edgerton, all you are called for is an opinion.

Q. What other causes besides wear and tear, leads to their being discarded or abandoned?

A. Well, services are put in at right angles to the street, cross the street, and whenever you dig to put down pipes and dig to put down mains or sewers or anything, you come across those services, they hit them with a pick and drive holes in them and disturb 40562
them, and they are subjected to deterioration more than those pipes laid lengthwise to the street of that kind, and when the earth is piled on them sometimes they settle down and make traps in the services, so that they do not get any gas, so that you have to take them up and straighten them out. I have seen thousands of services changed because the soil ate up the wrought iron and they had to substitute lead, and they had to put those lead services inside of wooden protecting pipes or slats to keep them from being crushed and bent.

Mr. Ransom: I object to the wandering statement, there is no claim any such thing was ever 40563
done in New York.

The Master: I will take it. Did you ever see that done in New York?

The Witness: Lead services?

The Master: Yes.

The Witness: No, not any gas pipes, no, sir.

The Master: I will strike out his statement then that he has seen them. Now, can you say what an average life of a service is, any more than you could holders or mains?

The Witness: Your Honor, you would have to average them up for every particular cause, because as I say, the conditions are so different that an average lifetime for one place would not be an average lifetime for another.

The Master: Well, I mean in New York City, could you give any opinion as to the average life of services.

Q. Taking into consideration your studies of the plants of the company and all the conditions you know here.

40505 The Master: Electrolysis and a pick axe hitting it, can you say what the average life is, or must you say as you did on mains and holders, that as to services you have got to figure precisely what happens?

The Witness: Yes, it has got to be figured out; but I know in regard to this, that services have been pulled out as extensively here as anywhere that I know of.

The Master: You don't think they are good for 75 years, do you, on an average?

The Witness: Oh, 75 years? No, sir.

The Master: Or 50?

40506 The Witness: No.

The Master: Or 40?

The Witness: No, not 40, either.

The Master: Or 30?

The Witness: Nor 30. Whenever they get inadequate, they have got to be changed or enlarged or something has to come out, something has got to be done.

The Master: I do not see how you can get any more on this, Mr. O'Brien.

Q. Well, would you say, Mr. Edgerton, from your knowledge of the records of the company, the com-

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plainant company, the conditions that obtain in New York above and below the ground and the growth and development of the gas business here and the extent of the distribution system and all the things that you know of that affect and have affected these services, that they have a longer life on an average, in your opinion, than 25 years?

Mr. Ransom: Objected to as incompetent, calls for an interpretation of the records which the witness is not competent to make.

The Master: I will get the witness's opinion for what it is worth.

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The Witness: I do not think a service will last 25 years in New York or anywhere else, because—

The Master: Don't tell us because. That is your opinion. Now, if Mr. Ransom wants your reasons for it he will ask them, but we do not need them now.

Q. Mr. Edgerton, you are acquainted with and have made a study of the distribution system of the complainant company and its affiliated companies, have you, at different times?

A. Yes, especially since the subways are—the excavations for subways and various other openings in the street, I have noticed particularly.

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Q. Will you state what are the usual causes for loss of gas or so-called unaccounted for gas of a gas company?

Mr. Ransom: Objected to as incompetent, this witness has no qualifications or experience which enables him to testify on that.

The Master: I will allow it.

Mr. Ransom: Exception.

A. The greatest cause for unaccounted for gas, in my opinion is due to the way in which you correct

your gas as made for temperature. That is one great cause. Another cause is the absolute leakage. I have seen in my experience in New York these leakage of gas blowing up covers of manholes for sewers.

Mr. Ransom: I object to this.

The Witness: And there is abundant evidence of a considerable leakage of gas, and I have taken great pains and tried to observe the difference between leakage and loss by difference in temperature and condensation. I have sat up nights many times to make experiments on the actual leakage

40571 of gas where it could be got at.

The Master: Don't you see, Mr. Edgerton, that whenever you are asked a question you roam all around the subject without answering, and stop there, taking up a lot of unnecessary time. Now, you were asked what caused unaccounted for gas, and you said errors or difference in methods of computing the corrected make.

The Witness: Yes.

The Master: You also said it was due to leakage. Now, would you say it is due to anything else?

Mr. Ransom: I move to strike out his state-

40572 ment about what he claimed to have observed and manholes being blown up.

The Master: No, it does not do any harm.

Mr. Ransom: It probably was in 1832 or 1878.

The Master: No.

Mr. O'Brien: No, we have had it just within the last month.

The Master: The Master has seen manholes blow up, whether caused from gas or gasoline or something else, I don't know, but the fact is that manholes do blow up once in a while. Now, you say it is due to leakage, to the method of comput-

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ing corrected make, and is there anything else that causes unaccounted for gas? You said condensation, I think.

The Witness: The location of the consumers' meters has a great deal to do with it.

The Master: Yes, and what else?

The Witness: And the way—the system of building, or taking the index of meters and the care with which it is carried out and eliminating estimates of the amount of gas used has to do with the apparent leakage or unaccounted for gas.

40574

The Master: Is there anything else that you think of?

The Witness: I have got a notable case of that kind.

The Master: Don't give us cases now. Is there anything else that you think of that causes unaccounted for gas.

The Witness: I do not think now of anything else that has to do with unaccounted for gas than those I have enumerated.

Q. What effect would the placing of consumers' meters in kitchens instead of in cellars have, kitchens where stoves are used, or ranges, which increase the heat of the kitchen?

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A. As a general thing meters are placed in cellars, in most companies, but in apartment houses here and in many places I have noticed that meters have been put where the average temperature is greater than that which the gas is corrected to, and that would be a cause for unaccounted for gas. Sometimes I have noticed many companies that did not take any pains to meter their own gas.

Mr. Ransom: Objected to, this wandering statement should be stricken out.

The Master: Yes, that statement will be stricken out, and the witness will be cautioned not to make statements again that are not responsive to questions, otherwise his testimony will be stricken out. Now, as I understand your last statement, you say that the placing of meters in the kitchens of apartment houses where the temperature is greater than the temperature at which the gas is corrected at the works will make an unaccounted for gas, is that correct?

The Witness: It will make a—

40577 The Master: Next question.

Q. Taking into consideration the conditions under which the distribution system of the complainant company is mantained and distribution of gas conducted, what would you say would be a reasonable percentage to be allowed for unaccounted for gas?

Mr. Ransom: Objected to as incompetent, no foundation.

The Master: Objection overruled, I will take his opinion if he will give it to me in figures.

Mr. Ransom: Exception.

The Witness: Well, I have taken pains to try to arrive at—

40578 The Master: I will strike that out. I have asked you for a figure. What do you say is the percentage of unaccounted for gas?

The Witness: I have seen it run all the way from 18 and 20 per cent down to nothing at all. Now, how am I going to give an average on that?

The Master: How do I know?

Mr. O'Brien: I am speaking about the complainant company.

The Master: You don't mean that literally, do you, no leaks at all?

The Witness: Yes, sir, no leaks at all.

The Master: You won't find a single leak in the whole system.

The Witness: They collected more money—

The Master: No, I want you to tell me whether you mean literally to say that there were no leaks at all?

Mr. O'Brien: Your Honor has got to take into consideration the witness's method of answering questions.

The Master: I want to find out what he means by his statement that it runs from 18 or 20 per 40580
cent to nothing, whether he means that in system such as that of the Consolidated Gas Company there is or should not be any leakage of gas at all.

The Witness: No.

The Master: There should not be?

The Witness: No, I didn't say that.

The Master: Then how do you say that there would not be any percentage at all?

Mr. O'Brien: He started to explain and you stopped him. Ransom comes in and cuts off his answer—he should withhold his objection until the question is answered, and then if it 40581
is not responsive it can be stricken out in a proper way.

The Master: We want to save time.

Mr. O'Brien: I know, but there are some rules of ordinary courtesy that must obtain at all times. Chivalry should not be entirely forgotten on Washington's birthday.

The Master: Do you want Mr. Edgerton to give an answer to this or not?

Mr. O'Brien: I want it given, and if it is

not responsive the usual motion can be made to strike it out.

(Question read as follows): "Then how do you say there would not be any percentage at all?"

The Witness: I say I have known of plac where for a long period of time the gas sold accounted to more than the gas made.

The Master: That is not my question. I am limiting my inquiry to the Consolidated Gas Company. You were asked what the percentage
40583 of unaccounted for should be, and you said it would be anywhere from 18 or 20 per cent to nothing. You said, "How can I figure the average." Then I asked you whether you meant to intimate by that that this Consolidated Gas Company ought to have no leaks i its mains at all, and you said no.

Mr. O'Brien: He was talking about unaccounted for, and you jumped to leaks.

The Master: Well, leaks makes unaccounted for.

Mr. O'Brien: He was talking about ordinarily unaccounted for gas.

40584 The Master: Don't leaks make unaccounted for gas?

The Witness: Yes, but there are many other causes of unaccounted for gas besides leaks.

The Master: But leaks make unaccounted for gas?

The Witness: Yes.

The Master: You are bound to have some leaks?

The Witness: You are bound to have some leaks, but at the same time while you are hav-

ing leaks you may sell more gas than you make. I have known of it in cases—

The Master: No, don't state any more.

Q. Are you able to state, Mr. Edgerton, what in your opinion as of 1918, and the first eight months of 1919—

The Master: Or the whole twelve months, it doesn't make any difference.

Q. (Continued.) Would have been a reasonable percentage of unaccounted for gas for this company?

The Master: I won't take his answer because the witness has already said he can't give it. 40586

Mr. O'Brien: But, your Honor—

The Master: He has already said that it might be anywhere from 18 to 20 down to nothing.

Mr. O'Brien: No, he was talking about companies generally when he made that statement.

The Master: No, it was this company. I will let you ask him again. What do you say should be the unaccounted for gas for this company in 1918 and 1919?

Mr. Ransom: I object to the question. This witness has had nothing to do with gas companies for thirty or forty years. He is thoroughly unqualified to make any such guess. 40587

The Master: I will take it.

The Witness: In my opinion these different causes should be differentiated to arrive at the actual, what it should be.

The Master: Well, what it should be, having gone through that process.

The Witness: Well, I think if you are allowing this correction for temperature, the statement would be that 2.21 leakage—I know in one case for a whole year—

The Master: No, I am talking about your opinion as to what it should be for the Consolidated Gas Company for 1918. Do you think it should be as much as 2.21?

The Witness: I think it is more than that.

The Master: Do you think it is as much as 3?

The Witness: Yes.

The Master: Do you think it ought to be as much as 4?

The Witness: I can't take out of my mind that I know what it is.

The Master: I know what it is according to the record.

Mr. O'Brien: You mean the company's claim.

The Master: You are being asked for an opinion, irrespective of anything in this case, based upon your expert knowledge of this industry, so that we may have the question perfectly clear, if you were the operating engineer of the Consolidated Gas Company, what would you be satisfied to see as unaccounted for gas?

The Witness: I would not be satisfied at all I would be after these leaks.

The Master: You would not want any unaccounted for?

The Witness: I would not want any unaccounted for, no.

The Master: And then it is your opinion that there should be no unaccounted for?

The Witness: Very little for actual leakage?

The Master: No, I am asking for everything condensation, change in temperature, everything else.

40591

The Witness: Then it may amount to as much —the correction for temperature is 18 per cent of unaccounted for.

Q. What have you found it to be in this company in other years?

Mr Ransom: I object to that.

The Master: Objection sustained.

Mr. O'Brien: You took testimony on that, your Honor.

The Master: The record shows it.

Q. Did you find, Mr. Edgerton, that the percentage of unaccounted for ought to be approximately the same, a reasonable allowance in 1918, as in 1906? 40592

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: You can ask him whether there ought to be any difference over a series of years, whether it ought to run uniform.

Q. In your opinion ought there be any uniformity in the reasonable percentage of unaccounted for gas allowed for the Consolidated Gas Company over a term of years?

Mr Ransom: I object to that as incompetent and indefinite.

40593

The Master: I won't take that form of question. I will allow you to ask the witness whether there should be any substantial difference in unaccounted for in 1916, 1914, 1912, 1909, whether it should be substantially the same.

The Witness: Substantially the same, aside from any catastrophe which would break up the mains to an extra amount.

The Master: If, however, subway work and other work broke mains, and there is a great deal of leakage, you might find it higher?

The Witness: Yes, sir.

The Master: Go ahead, next question.

Q. Mr. Edgerton, are you prepared to give us your final figures on mains, your appraisal of mains that we omitted from the record on Friday?

The Master: You mean his 1906 appraisal of mains?

Mr. O'Brien: Yes.

A. Yes.

Mr. Ransom: I object to it as incompetent. The witness has no qualification for giving a fig-

4059⅝ ure on mains.

The Master: I will take it.

Mr. Ransom: He has not shown any qualification on mains in New York City.

The Master: I am going to take it anyway.

Mr. Ransom: Well, the complainant is powerless under your Honor's desire to prolong this case.

The Master: No, you don't prolong it at all. I know what I would do if I were counsel for defendants.

A. My appraisal in 1906 aggregated $8,919,792.55.

Q. Was that in your judgment the fair cost to

4059⅝ reproduce the mains of the complainant company as of that time, less depreciation?

Mr. Ransom: I object to that.

The Master: I will allow it.

A. It contained there an estimate added of pavement over mains.

Q. This figure includes a certain allowance for pavement over mains?

A. Yes, sir.

Q. Can you state what that amount was?

A. Well, it was $2,883,000 in round figures.

The Master: That is near enough.

40597

Q. Were there any deductions made from this estimate during the course of your rebuttal testimony?

The Master: Why didn't you give me his final figures?

Mr. O'Brien: There are some few corrections in his testimony made during rebuttal, and I thought rather than wait until counsel for the complainant pores through that record and tries to bring out some of the corrections made that I could anticipate that and place it on the record now.

40598

The Master: Go ahead.

Mr. Ransom: The witness one minute swears that the figure was right, and then he wants to correct it within five minutes.

The Master: Go ahead. Did you make some corrections in these figures in your rebuttal?

The Witness: I deducted the pavement over mains, and I substituted in place of that the pavement over old mains such as had existed before they introduced asphalt and other more extensive pavements.

The Master: What difference did that make in your figures?

40599

The Witness: I cannot state that at the present, because I see the paper that I copied that off on is not here, I haven't it with me.

Mr. O'Brien: I will ask permission to have that incorporated in the record.

Mr. Ransom: I think it is a pity to have this kind of testimony go into the record which is going perhaps before another court, a court which cannot see the witness and the way this examination is being conducted, and to give this sort of testimony the countenance of having taken place under the guise of law is a reflection on the law.

The Master: Go ahead, next question.

Q. Does this figure include any allowance for depreciation this figure of $8,919,792.55?

A. No, sir, that is what I had reserved to figure out, the proper depreciation to charge off of that figure.

Q. At the time you testified in the original case, you did not give the Master your item for depreciation on mains?

A. No, sir.

Q. Mr. Edgerton, are there any recognized works on engineering that go into the gas making science?

A. Yes, sir, a great deal.

Q. Will you name some of the standard authors?

Mr. Ransom: I object to that as incompetent, and not even interesting.

The Master: I don't believe that is proper on direct testimony. I think the use of authority in that manner is only correct to use in cross-examination. I do not believe that you can offer standard works as part of the direct proof. That is my recollection of the rule.

Mr. Ransom: Mr. Little qualified on what he had read, but I don't think this witness can.

The Master: I think that is the rule, that standard books can be referred to in an attack upon a witness's testimony, but you cannot offer in evidence standard books in that way, or refer to them in that form. I shall so rule, that being my understanding of it.

Q. Would you state, Mr. Edgerton, whether or not you know of any generally recognized formula for the fuel value of illuminating gas?

Mr. Ransom: I object to that as incompetent.

The Master: How is that material, the fuel value of illuminating gas?

40603

Mr. O'Brien: This goes to the question of what the public gets for 80 cents under the statute.

The Master: Objection sustained.

Mr. O'Brien: They are entitled to get—this is outside of the question of fair return—the consumers are entitled to get 80 cents worth for what they pay, and these questions that I am going to address to the witness now relate to the fuel value of what they are supposed to be getting for 80 cents.

The Master: Objection sustained. I have your point. 40604

Mr. O'Brien: With a view of showing that with the present price of coal they are not getting a fair equivalent for their 80 cents. That is an important factor in rate cases, though sometimes overlooked.

The Master: Objection sustained.

Mr. O'Brien: Well, will you make it broad enough to shut out all examination on this subject?

The Master: Well, if I understand your point, I have made my ruling broad enough to cover it, I think. I don't know how I can make it any more definite. You might ask another question. 40605

Mr. O'Brien: I want to bring out from the witness both his own calculations and the generally recognized standards or requirements for fuel value of illuminating gas, with a view of showing your Honor that at the price of coal that was current in 1918 and 1919, the consumers would be paying practically blank dollars for their gas as fuel.

The Master: I won't take proof on that subject, if that is what you want me to say.

Mr. O'Brien: I note an exception to your Honor's ruling. It is my purpose to show as I have stated, just what the gas is worth to consumers.

The Master: That I will not receive.

Mr. O'Brien: As an important factor in the case.

The Master: I won't receive it, and I will make that ruling as broad as you want it, in order to save time, and save other questions on the same line.

4066-7 Mr. O'Brien: I note an exception.

Q. Did you know Dr. Love in his lifetime?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What position did he hold?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. How long did he hold it?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

4066-8 Q. When did he terminate his connection with the City Department of Water, Gas & Electricity?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. When did he enter into the employ of the Consolidated Gas Company?

Mr. Ransom: I object to that as immaterial.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Do you know when he died.

Mr. Ransom: I object to that.

The Master: Objection sustained.

40609

Mr. O'Brien: Exception.

Mr. O'Brien: At this time I will suspend with the witness, with your Honor's permission, and when he gets that paper that he referred to—

The Master: Where is that paper, Mr. Edgerton?

The Witness: Well, in order to save carrying this heavy envelope, I put it in a smaller envelope, and in transferring it from that to this—

The Master: Where was that, is it at your house or somewhere?

The Witness: I don't think it is lost, it is more possibly where I transferred it from the other envelope to this.

40610

The Master: Is there somebody at your house who could get it and send it down here?

The Witness: It is not at my house, it is at the office.

The Master: Is there somebody at the office who could send it up here?

The Witness: Well, if they could find it.

The Master: Where is your office?

The Witness: 1717 Tribune Building. I don't suppose anybody could find it but myself.

Mr. O'Brien: You could get it back this afternoon?

40611

The Witness: Yes.

The Master: Have you other witnesses to fill up the morning?

Mr. O'Brien: I will send for Dr. Bemis. He is on call—as soon as you are ready for him.

The Master: Mr. Edgerton, suppose you go down to your office, get these papers and come back as soon as you get them. Will you do that?

The Witness: Yes. All that paper has is this appraisal and various data backing it up.

The Master: You had better go down and get it and come back as soon as you can.

Mr. O'Brien: I will finish up at that time, your Honor.

The Master: As soon as he comes back.

JOHN J. BOYLAN, recalled.

DIRECT EXAMINATION BY MR. CHAMBERS:

Q. Senator Boylan, you have made an examination of what is known as the 15th Street office building
4061-3 of the Consolidated Gas Company?

A. Yes, sir, I have.

Q. And you have been through the building yourself and examined the uses to which it is put to a certain extent?

A. Yes, sir, I have.

Q. And you have examined—you have had in your possession and examined Complainant's Exhibit 186, have you not?

A. Yes, sir.

Q. And you know from your examination and from this exhibit how the building is occupied and the uses to which it is put generally?

4061-4 A. Yes, sir, I do.

Q. You also had in your possession the leases of the building, the present leases of the building to the different tenants?

A. I have seen them, yes, sir.

Q. Did you find out the number of square feet in the building, floor space?

A. Yes, sir, I did.

The Master: You mean occupied floor space or the theoretical floor space including walls, etc.

Q. The occupied floor space?

A. Yes, sir.

Mr. O'Brien: Do you mean that he measured it or that he took somebody else's figure on it?

The Witness: Why, I took the floor space as shown on the company's exhibits.

Q. How much was that?

A. The gross square footage of the entire building is 404,420 square feet.

Q. And did you ascertain the floor space that was occupied by the Consolidated Gas Company and the tenants together?

A. Yes, sir.

Q. How much was that, Senator? 40616

A. That amounted to 294,445 square feet.

The Master: Occupied by whom?

Mr. Chambers: Occupied by the Consolidated Gas Company and its tenants.

The Witness: That is the total space occupied, 294,445 square feet.

The Master: Over 100,000 square feet in the halls, walls, etc.

Q. How much unrentable space did you find, Senator?

A. 109,975 square feet.

By the Master:

Q. What do you mean by unrentable space? 40617

A. Space taken up with hall, walls, elevators, etc.

Q. It does not include auditorium space or anything of that sort? You have not excluded the auditorium as not used, or something of that sort?

A. No.

Q. Simply the elevators, walls, halls, stairways, and other unusable space?

A. Yes, sir.

Q. That is excluding the space taken up generally for halls, elevators, stairways, walls and the like, is that the idea?

A. Yes, sir.

Q. So that there is approximately 300,000 square feet of usable occupied space?

A. Approximately that, 294,445.

By Mr. Chambers:

Q. Now, Senator, give that unrentable space in percentage of gross building area, will you?

A. The unrentable space is equal to about 27.2 per cent of the gross building area.

Q. Did you ascertain the space occupied by the restaurant?

40619 A. I did.

Q. How many square feet was that?

A. 13,601.

Q. Did you ascertain the square foot area that is occupied by the telephones, telephone space?

A. Yes, sir.

Q. How much was that?

A. 2,266 square feet.

Q. Did you find out how many square feet of floor space was occupied?

A. Yes, sir.

Q. How much?

A. 278,478 square feet.

40620 Q. And these three amounts that you have just given, restaurant, telephone and floor space occupied, make the sum of 294,445 square feet?

A. Yes, sir, they do.

Q. Now, how many square feet are left after you deduct the restaurant and telephone space, which you have given for the total floor space?

A. 278,478 square feet.

Q. How much space is occupied by the auditorium on the 13th and 14th floors?

A. 6,670 square feet.

Q. And deducting from that the 278,478 square feet leaves you how many square feet?

A. 271,808 square feet.

Q. Did you find out the space occupied by the Consolidated Gas Company?

A. Yes.

Mr. Ransom: I would like to ask—how you found out these various things—did he measure them himself or are these the figures found on some exhibits?

The Witness: We took the figures as shown on the Gas Company's exhibits.

Mr. Ransom: That is the figures, or did you make computations? 40622

The Witness: We made part of the computation, but the gross areas were taken from the exhibits produced by the Gas Company, Exhibit 186.

Mr. Ransom: Where on that exhibit do you find that figure?

The Master: You had better leave that for cross-examination. What I would like to know, Senator Boylan, is when you took the area occupied by the Consolidated Gas Company did you include or exclude the auditorium, restaurant and telephones?

The Witness: The 109,194 square feet occupied by the Gas Company is exclusive of the auditorium. 40623

The Master: And the restaurant?

The Witness: Yes, sir.

The Master: And the telephone?

The Witness: Yes, sir.

The Master: Does that include vault space downstairs?

The Witness: I took the space occupied by the company on each floor.

The Master: Including the vaults?

406,24 John J. Boylan, Direct

The Witness: Including the basement and the store, store floor.

Q. Now, the total amount of square footage occupied by the tenants is how much?

A. 162,614 square feet.

Q. That is to say that out of the gross floor space of 404,420 square feet, only 162,614 square feet, or 40.2 per cent, brings in any revenue, is that so?

Mr. Ransom: I object to that. What does he mean by brings in revenue?

The Master: That objection will be sustained
406,25 for two reasons. First, the question of its bringing in revenue is indefinite. Second, the question as framed is unfair, in that the building necessarily has halls, elevators, stairways and the like which must be excluded in talking about rentable space. There is 294,445 square feet of rentable space according to this witness. I will permit counsel to ask the witness whether it is the fact as he figures it that out of the 294,445 square feet of rentable floor space, only 162,614 square feet are rented to tenants other than the Gas Company for which rent is charged?

Q. Well, that is so, isn't it, Senator?

406,26 The Master: Isn't that correct, Senator Boylan?

Q. That out of this 294,445, square feet only 163,614 square feet is rented to outsiders?

A. Yes, sir.

Q. And that is what percentage?

A. That is 40.2 per cent of the gross floor space.

Mr. Ransom: I move to strike that out.

The Master: No, I will allow it. It is a mere matter of computation, I could have done it myself.

Mr. Ransom: But he is comparing it, which is obviously unfair, as your Honor has pointed out, with the total gross floor space.

The Master: That 40 per cent was not of the gross floor space?

Mr. Ransom: Yes.

The Master: Of the gross? He said 40 per cent of this 204,445 square feet.

The Witness: Of the 271,808 square feet.

The Master: 40 per cent of that is 162,000?

Mr. Ransom: The witness's statement which went on the record, was very clear, that the 40.2 per cent was of the gross floor space.

The Witness: I took 40 per cent of 4,420.

The Master: I will strike that answer out, 40628
I don't want that figure.

Mr. Chambers: Exception.

Q. Now, Mr. Boylan, take the office portion of the building and that part of it which is known as the drafting room space on the 18th floor?

A. Yes, sir.

Q. You looked that over, did you?

A. Yes, sir, I did.

Q. How much could that space that is occupied as a drafting room be reduced in your opinion?

Mr. Ransom: I object to that as incompetent. It is perfectly absurd.

The Master: Objection sustained. I won't 40629
take Senator Boylan's judgment, I will not let him set up his judgment as against the judgment of the officers of this company as to how much they need for a drafting room.

Q. How much square feet are they now using as a drafting room on that floor?

Mr. Ransom: Objected to.

The Master: Objection sustained on the ground that it is immaterial.

Mr. Chambers: Exception.

406,30

Q. Are you able to say how many square feet is now occupied as shown on Exhibit 186 as a drafting room?

Mr. Ransom: I object to that as incompetent and immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Is there more than sufficient room there on the 18th floor for the use to which it is put?

Mr. Ransom: I object to that on the ground previously stated.

406,31

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. How many square feet on the 18th floor, using it as it is now used by the Consolidated Gas Company, could be dispensed with?

Mr. Ransom: I object to that. The witness obviously knows nothing about it.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, take the display room on the 12th floor. How many square feet are occupied as a display room on the 12th floor?

Mr. Ransom: I object to that.

406,32

The Master: In order to shorten this proposition, I assume that this question is preliminary to a question as to how much of it the witness deems necessary for that purpose. With that understanding of the question I will sustain the objection, as incompetent and irrelevant.

Mr. Chambers: Exception.

The Master: I will not take the witness's judgment on a matter of that kind.

Mr. Ransom: As a matter of fact, this company is not even on the 12th floor.

Q. Are you able to state, Senator, from what you saw there, how much of the floor space occupied on the 12th floor for a display room could be dispensed with, in square feet?

Mr. Ransom: I object to that as incompetent and irrelevant.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Could the display room be reduced, the space used as a display room on the 12th floor, be reduced?

Mr. Ransom: I object to that as incompetent. 40634

The Master: Same ruling.

Mr. Chambers: Exception.

Mr. Ransom: There isn't any such room.

Mr. Chambers: What is that?

Mr. Ransom: There isn't any such room.

Q. On the 12th floor, what space or what rooms do you mean by "display room"?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Could rooms known as—

Mr. Ransom: I object to this method of questioning the witness. It is simply an indirect method of getting incompetent matters in the record. 40635

Q. Couldn't rooms designated as commercial department, sales of appliances, and rooms designated as commercial department, sales of appliances, be dispensed with on the 12th floor, in your opinion?

Mr. Ransom: I object to that as highly improper in form and substance.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: I am basing it upon the broad proposition that I will not take the opinion of Senator Boylan as to what space ought to be used for particular purposes, as against the judgment of the officers of the company.

Mr. Chambers: He is not saying that, he is stating just what he saw there, whether it is gas business or other business—

The Master: But I am not going to take the Senator's judgment, balanced against the judgment of the trustees of this corporation, any

40637 more than I am going to let experts say that they would or would not use a particular piece of land, as against the judgment of the officers of this company. I am not going to substitute the judgment of the Court or of the witness against the judgment of the company, so long as I find it honestly exercised.

Mr. Chambers: It seems to me it is material and competent.

The Master: I won't take it.

Mr. Chambers: I note that you will not take it, and I am taking an exception to it.

The Master: That is proper.

40638 Q. Now, on the 4th and 5th floors you found that certain portions of these floors were used for storage?

Mr. Ransom: I object to that as incompetent and immaterial. The witness cannot merely saunter in there once or twice—

The Master: I will let him say what he saw.

A. Yes, sir.

Q. How many square feet on the 4th floor was used for storage?

Mr. Ransom: I object to that as incompetent.

The Master: I shall rule that out on the same ground, that I will not take his judgment.

Q. Are you able to say how much space on the 4th floor was unnecessarily occupied as storage space?

Mr. Ransom: I object to that as incompetent.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Can you state in square feet how much of the space on the 4th floor is not needed for storage as you found the situation?

Mr. Ransom: I object to that as incompetent. 40640

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Now, on the 5th floor, you found how many square feet occupied as storage?

Mr. Ransom: I object to that as incompetent.

The Master: I assume that is on the same line, and I sustain the objection.

Mr. Chambers: Exception.

Q. Are you able to say, Senator, how many square feet on the 5th floor is unnecessarily used for storage?

40641

Mr. Ransom: I object to that as incompetent.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Is there space on the 4th and 5th floors that is not necessary or needed for storage purposes?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

40642 John J. Boylan, Direct.

Q. What kind of storage was that, Senator, if you recall?

Mr. Ransom: I object to that as incompetent and immaterial. A mere causal visit by the Senator does not establish anything material to the issue in this case.

The Master: I will allow the witness to state.

Mr. Ransom: Exception.

A. Storage of appliances, gas appliances.

Q. And when I asked you the questions as to what part of those two floors, in square feet, was not needed
40643 for storage, your answer would have referred to storage of appliances, would it not?

Mr. Ransom: I object to that as incompetent.

The Master: I will allow it.

Mr. Ransom: How can he pass on how much this company needs for those things?

The Master: I am not letting him do that. I am letting him state that the space to which he refers is space that is used for the storage of appliances. That is correct, isn't it, Senator?

The Witness: Yes, sir.

The Master: Next question. I am sustain-
40644 ing your objection that the Senator should not state as to whether it should or should not be used for that purpose.

Q. I want to go back to the display space on the twelfth floor. Do you recall, the display of what?

Mr. Ransom: I object to that. It is contrary to the testimony, there is no display space on the twelfth floor.

The Master: I will allow it.

A. Yes, sir.

Q. The display of what?

A. The display of gas appliances for commercial uses.

Q. And so if you had been permitted to answer the question your answer would have referred to that use, would it not?

Mr. Ransom: I object to that as incompetent.

The Master: Objection overruled.

A. Yes, sir, it would.

Q. Senator, you found certain area unoccupied, did you not?

Mr. Ransom: I object to that as incompetent. The witness is not qualified to say whether area is unoccupied or not. 40646

Q. Speaking of the area outside of the halls, elevator space, and so on.

Mr. Ransom: The witness is not qualified by a casual visit, or at most, two casual visits, to say whether a space is occupied or not.

Mr. Chambers: Why do you keep saying, "casual visit"? There is no such testimony in the case.

The Master: Absolutely vacant space?

The Witness: Yes.

Q. Where? 40647

A. That was on the second floor.

Q. Looking at Exhibit 186, can you state wher that was?

A. It was on the second floor towards the Irving Place frontage.

Mr. Ransom: He ought to fix the date.

Q. How many square feet?

A. There were two rooms, one of about 1,360 square feet, and the other 440 square feet.

The Master: When you say that is vacant, when was it that you saw it was vacant?

40648

The Witness: February 19th and 20th, 1920.

Q. There wasn't anything in there at all?

A. No, sir.

The Master: Not a desk or a chair, not a thing?

The Witness: No, sir.

The Master: Absolutely vacant?

The Witness: Yes, sir.

Q. You gave the square feet, did you?

A. Yes, sir.

Q. Were you told, did anybody tell you that any
40649 part of that space had been used at some time or other.

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Q. Were you informed from the testimony in the case, or the exhibits what that space was at one time occupied for?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Ransom: Might I just find where you place this vacant space?

40650 The Master: On the second floor on the Irving Place front.

The Witness: The old Boy Scouts and the old display of gas lighting fixtures.

Q. On the twelfth floor you found, did you not, that there was certain space occupied by what is known as the utilization department?

A. Yes, sir.

Q. How many square feet did you find?

The Master: Assuming that that question is preliminary to a question as to how much he deems of it was necessary, I will sustain the objection.

Mr. Chambers: Well, this is a little different situation.

The Master: How? Isn't it the point of your inquiry to show that part of it is not needed?

Mr. Chambers: No, I want to show how many square feet was used for that.

The Master: For what purpose do you want to show it?

Mr. Chambers: For the purpose of showing how much of it they did not need, and so on.

The Master: Objection sustained.

Mr. Chambers: Exception. You won't let me 40652
ask any questions in regard to that?

The Master: No.

Mr. Chambers: Of course we challenge the use of that floor space for that department.

The Master: I assume you are challenging it all the way through.

Q. Do you know how many square feet are occupied for the utilization department?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained on the grounds stated.

Mr. Chambers: If it goes out, how are you going to take it out?

The Master. I am not going to take it out. 40653

Mr. Chambers: How is the Appellate Court, if it should decide that it should go out?

The Master: Send it back for a new trial.

Mr. Chambers: We want to avoid that if possible.

The Master: Go ahead.

Mr. Chambers: Exception.

Q. Are you able to say how much of the space that is occupied for the utilization department is not needed—

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: I don't see any use of wasting a lot more questions on that line, Mr. Chambers.

Mr. Chambers: Well, your Honor doesn't know what is coming yet.

The Master: I say on that line, as to other space. I won't change my ruling.

Q. How many square feet on the 13th floor is occupied by the auditorium?

40655 The Master: He has already told us that. I will let him state it again.

Mr. Ransom: I object to it as incompetent.

The Master: He has stated it, I know he has. He gave an area of about 13,000 square feet, I think wasn't it?

The Witness: The auditorium is 6,670 square feet.

The Master: On each floor, or altogether?

The Witness: Altogether.

Q. And then you found on the thirteenth floor what is used for a lounge room?

Mr. Ransom: I object to that as immaterial.

40656 The Master: I will allow it.

Mr. Ransom: Exception.

The Master: The record shows that. You can answer that, Senator. How much space did you find in the lounge room?

Q. It was a lounge room and class room on the thirteenth floor, how many square feet?

A. 5,248 square feet.

Q. And on that same floor did you find some space occupied for emergency sleeping rooms?

A. Yes, sir.

Q. How many square feet?

A. 470 square feet.

Q. Now, the lounge room and class room, what was in that?

A. There were several rows of chairs that were in sections of four, and there were a couple of blackboards.

The Master: It looked like a class room, did it?

The Witness: Yes, the blackboards and the chairs.

Q. Did you find out the use, who used it, what it was used for?

Mr. Ransom: I object to that as incompetent. 40658

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did anybody representing the company tell you what that was used for?

Mr. Ransom: I object to that as incompetent.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Then there was a coat room on that same floor of how many square feet?

A. 210 square feet.

Mr. Ransom: Either the witness is taking the measurements from the exhibit—I don't believe he has measured it himself.

Q. The auditorium—how many square feet exactly did that occupy on the 13th floor? 40659

Mr. Ransom: I object to that as fully and repeatedly covered.

The Master: Objection overruled.

A. 3,485 square feet.

Q. Then you found a room occupied by the American Gas Association on the 13th floor?

A. Yes, sir.

Q. How many square feet?

A. 3,600.

40660 John J. Boylan, Direct.

Q. Then you found another room called the expert-room?

A. Yes, sir.

Q. How many square feet was that?

A. 860 square feet.

Q. How many square feet on the whole 13th floor, including everything?

A. 15,273 square feet.

Q. Can you say, out of that number of square feet, how many square feet are not needed?

Mr. Ransom: I object to that as incompetent
40661 and immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say how many square feet on the 13th floor, the total square feet, how many of those square feet are not in your opinion necessary?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, on the 14th floor, how many square feet did you find, total?

Mr. Ransom: I object to the question asked in this form, how many did he find. I think he
40662 should be called upon to state whether he measured it, or whether he computed it from the maps, or whether he took some figures that were furnished to him from some other source. "What did you find" is a vague and indefinite term.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. The auditorum alone on the 14th floor, how many square feet?

The Master: I will sustain the objection, for two reasons. One is that Senator Boylan has given us the total area on the 13th and 14th floors.

He has just given us the area on the 13th floor, which shows that the balance is on the 14th. Secondly, that it relates to the same line of testimony as to what in the opinion of the witness is needed. I rule it out on those two grounds.

Mr. Chambers: Exception.

Q. What was in the auditorium room?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, on the thirteenth floor did you find some 40664
other space that was claimed to be used for emergencies?

Mr. Ransom: I object to that as incompetent.

The Master: I will allow it.

A. Yes, sir.

Q. What was in there?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you find some space claimed to be used for emergency sleeping rooms on the thirteenth floor?

The Master: We have had that.

Mr. Ransom: I object to it as fully covered. 40665

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. How many square feet were used for what was claimed was emergency sleeping rooms?

Mr. Ransom: I object to that.

The Master: Objection sustained, as already covered.

Mr. Chambers: Exception.

Q. How much space on the thirteenth floor was used for what is known as expert's room, in square feet?

Mr. Ransom: Objected to, we have had that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, on the seventeenth and eighteenth floors did you find some space claimed to be used for experts?

Mr. Ransom: I object to that as incompetent.

The Master: I will allow it.

Mr. Ransom: Claimed to be used for experts?

The Master: Yes, that is all right. I am not going to let Senator Boylan say they are not using it for experts.

40667 Mr. Ransom: We won't admit that the representatives of these defendants are experts.

The Master: The question was whether you found some rooms that were claimed to be used by experts. Now, your question is how much space?

Mr. Chambers: How much space, yes.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What was in there, do you know?

Mr. Ransom: I object to that.

The Master: Same ruling.

Mr. Chambers: Exception.

40668 Q. In your opinion and judgment could that space be rented?

Mr. Ransom: I object to that as incompetent.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Was that space on the seventeenth and eighteenth floors designated as "used for experts" needed?

Mr. Ransom: I object to that as incompetent.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Have you figured out, Senator, how much, according to the leases that are in evidence, by other com-

panies, how much a square foot this building is, according to the total square footage, how much this building is bringing in to the Consolidated Gas Company?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. How much do the subsidiary companies and the tenants pay per square foot?

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Have you computed the amount that the Astoria 40670
Light, Heat & Power Company, Frank DeFini, the New Amsterdam Gas Company, the Standard Gas Light Company, the American Gas Association, the National Coke & Coal Company, the United Electric Light & Power Company, the New York Edison Company, the Dahlstrom Metallic Door Company, and the New York Mutual Company, and the Electric Refrigerator Company—have you figured out the floor space occupied by each of those tenants?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Have you figured out the rate per square foot, 40671
the average rate per square foot paid by those tenants?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. For the floor space occupied.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Have you figured out the rate per square foot, or are you able to state the rate per square foot paid by each of these tenants for the space they occupy?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: What is it your contention that they pay too little?

Mr. Chambers: I am not contending in that regard. That is not the purpose of the question.

Q. You have had before you the leases, have you not, of all these companies for 1919 and 1920, Senator?

Mr. Ransom: Objected to.

The Master: You can answer that.

Mr. Ransom: Exception.

A. I have; yes, sir.

40673 Q. It was with those leases before you that you figured out the floor space occupied by each of the tenants, the amount of rent they pay, and the rent per square foot paid by each tenant?

Mr. Ransom: Objected to.

The Master: He can answer that.

Mr. Ransom: Exception.

A. Yes, sir.

Q. And the figure that you gave for the average rate per square foot was based on the floor space occupied by each tenant—the rent and rate per square foot.

Mr. Ransom: Objected to as incompetent.

40674 The Master: I will allow the witness to say that is the fact.

Mr. Ransom: Exception.

A. Yes, sir.

Q. Now I ask you what was the average rate per square foot paid by these tenants under the leases?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained, unless counsel claims that the rent was inadequate or too low.

Mr. Chambers: Exception.

Q. Which company paid the lowest rent per square foot?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. The leases are the best evidence.

Mr. Chambers: Exception.

Q. You have found the square feet occupied by the restaurant and the telephone space?

The Master: The objection is sustained.

Mr. Chambers: Exception.

Q. Have you figured in dollars the amount at the rate, the average rate paid by the other tenants, that would result from each one of these different items I have asked you about? 40676

The Master: That is, the elimination of them?

Mr. Chambers: Yes.

Mr. Ransom: Objected to as incompetent.

The Master: In other words, your inquiry is, if the Gas Company did not use the space that the witness was prepared to testify about?

Mr. Chambers: That he was allowed to testify about.

The Master: How much money they would save?

Mr. Chambers: Yes.

The Master: Objection sustained.

Mr. Chambers: That is, I am going to ask him separately if he has in dollars how much for the space that he spoke of, the drafting room and the display space on the 12th floor. 40677

The Master: You need not proceed any further.

Mr. Chambers: And the storage and space on the 4th and 5th floors.

The Master: I assume Mr. Chambers, without your proceeding any further, that the witness is prepared to testify as to the amount in dollars which would be saved to this company if all of the space to which inquiry was directed were

eliminated, as he was prepared to advise what in his opinion should be done, and the objection is sustained.

Mr. Chambers: And the average rate per square foot indicated by the leases.

The Master: Yes, per square foot charged to tenants. Objection sustained; there is no use going over every item.

Q. How much money would be saved by the space that was wholly unoccupied?

Mr. Ransom: Objected to, as it assumes there
40679 was space unoccupied.

The Master: Objection sustained; it is immaterial.

Mr. Ransom: The witness does not know whom that space belongs to, or why they did not have any furniture in it.

The Master: Objection sustained on the ground it is not material.

Mr. Chambers: You object to allowing him to tell?

Mr. Ransom: It is immaterial.

Mr. Chambers: Exception.

Q. When you made your examination of the build-
40680 ing did you talk with anybody representing the Consolidated Gas Company as to the uses to which these were put?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. What is office space worth in that neighborhood, in that kind of a building now?

Mr. Chambers: I object to that. I have not asked him anything about that.

The Master: No, but I would like to know.

Mr. Chambers: It is incompetent, irrelevant and immaterial, and not proper cross.

The Master: What in your opinion is office space worth up there, in a building like that, in that locality, 1918, 1919 and today?

The Witness: In 1918 and 1919 I think the very good evidence would be the leases that were submitted, which I have analyzed.

The Master: No, I am not asking you that. All right, you would state that the leases were at a fair rental, then; is that what you were about to say?

Mr. Chambers: I object to that. I do not think we claim that. They are low. 40682

The Master: I asked the witness, Mr. Chambers, to give me his opinion of the fair rental value of space of that character, in that building, a building in that locality. He proceeded to say that the leases were pretty fair evidence of the value. I am now asking the witness to tell me frankly whether he believes that the rent charged to the tenants under those leases was a fair rental.

Mr. Chambers: Your Honor, just a minute. I object to that as incompetent, irrelevant and immaterial.

The Master: The objection is overruled. 40683

Mr. Chambers: You did not wait until I finished the objection. I also object on the ground we have not offered any evidence of that.

The Master: I know you have not.

Mr. Chambers: We only offered evidence as to what they are renting it for.

The Master: I noticed particularly you did not, and I noticed particularly that you made the statement you did not question the rental.

Mr. Chambers: No, I did not say that.

The Master: All right, you said you made no contention about it.

40684

Mr. Chambers: Let us get the record straight and not wrong.

Mr. O'Brien: I have something to say for the defendant Swann before this is over, on this colloquy as to rentals.

The Master: It is over now.

Mr. Chambers: You said that I said something, and I do not say that I do not question it. I do.

The Master: The incident is closed in view of the attitude of counsel for the defendants, and the Master withdraws the inquiry. Is that all

40685 for Senator Boylan?

Mr. Chambers: I move to strike out, in view of your withdrawal of the question, the other question asked him and answered by him.

The Master: The motion is denied.

Mr. O'Brien: We have an isolated question and answer there now, your Honor—sort of an island of safety on this record.

The Master: I know what we have on this record. We have just enough to indicate and show on the record the attitude of counsel as to how far they believe it is their duty to have their witnesses inform the Court frankly and fully as

40686 to what they believe is their fair opinion in this case.

Mr. O'Brien: I have an opinion on this matter.

The Master: Yes, so have I—a very strong opinion and I have expressed it on this record. I do not believe it is the duty of counsel representing the State, the District Attorney of the Public Service Commission to befog an issue, but I believe it to be their duty to bring out every relevant and material fact which will inform the Court and enable the Court to determine the equities in this case.

Mr. Chambers: I take an exception to that statement.

Mr. O'Brien: Your Honor, we have a very serious duty, and that is to object and protest every time that you take a witness, when he is presented on certain subjects, and try to put him through a cross-examination.

The Master: I am not trying to cross-examine at all.

Mr. O'Brien: We have the record on that.

The Master: I am accepting Senator Boylan as a witness on this subject; and on the statement 40688
that he gave me as to 57th Street, in the light of the testimony he expressed, I thought he would help me in this instance. In view of the attitude of counsel I have withdrawn the inquiry and the matter is closed; I do not want to hear any more about it. Anything more, Mr. Chambers?

Mr. Chambers: That is all. I take an exception to the Master's attitude and his remarks.

Mr. Ransom: I have one or two questions.

Cross-examination by Mr. Ransom:

Q. Mr. Boylan, you have given here certain figures of gross square footage and square footage of space occupied by hallways and the like, and square footage 40689
occupied by tenants and by the complainant company. From what source did you get those figures, and in what method?

A. I got the information from exhibits in this case, Exhibit 186 and a copy of another exhibit, of which I do not know the number. It says "Consolidated Gas Company of New York, Table Showing Occupancy of Floor Areas in General Office Building as of July 1st, 1910."

Q. That is, you did not compute these yourself, then—any of these areas?

40690 John J. Boylan, Cross.

A. I have accepted the areas of the company as given in this exhibit.

Q. And you did not measure any of them?

A. I did not actually measure them; no, sir.

By the Master:

Q. Your computations are based upon the information you got from these exhibits, assuming them to be right?

A. Yes, sir.

By Mr. Ransom:

Q. How many times have you been in that building
40691 in East 15th Street to look over these different floors?

A. Oh, altogether three times.

Q. On what dates.

A. February 19th and 20th and a date earlier than that. Perhaps three or four weeks earlier than that.

Q. Did you go through all the floors on that earlier date?

A. Well, on the 19th—

Q. Did you go through all the floors on that earlier date?

A. No, sir.

Q. What floors did you go through on that earlier date?

40692 A. I don't remember exactly what floor.

Q. And that was the date that you went there to see the plans for the 57th Street Building?

A. Yes, sir.

Q. And you went to the 17th floor to see them?

A. I do not remember the floor. Some floor there.

Q. It was on that date you were on only one floor?

A. Yes, sir.

Q. Then on the 19th and 20th did you go through all of these different floors, on both of those dates?

A. I went through all of them on the 20th.

Q. But not on the 19th?

A. Not all of them on the 19th; no, sir.

The Master: Did you duplicate your work on the 20th?

The Witness: Pardon me?

The Master: Did you duplicate your work on the 20th—go over some of the same space that you went over on the 19th?

The Witness: I checked it up. Yes.

Q. How long also would you say you had been on these different floors?

A. Oh, I would say about four hours.

Q. On the 19th and 20th?

A. About four hours. 40694

The Master: Altogether?

The Witness: Altogether; yes, sir.

Mr. Ransom: That is all.

Mr. Chambers: That is all, Senator.

The Master: Where is Dr. Weber?

Mr. Clark: I have been trying to get him. He was on his way from his home to his office and I have been trying to get him.

The Master: How about Mr. Howard?

Mr. Clark: He is not at the office either. I will have to get him through Dr. Weber. He was to call me as soon as he gets in.

The Master: Where are we at, then—nothing else? 40695

Mr. Ransom: Mr. O'Brien is here with Mr. Edgerton. I can go ahead with Dr. Bemis, though it will only take a minute.

The Master: Have you any other witnesses on direct Major?

Mr. Clark: No, not now.

The Master: What do you mean not now? Will there be any more?

Mr. Clark: I don't believe there will, but I will not state definitely that there won't be.

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The Master: Mr. Chambers, have you any other witnesses on direct?

Mr. Chambers: Not ready now, no.

The Master: Who else have you got to call?

Mr. Chambers: There is Mr. Maltbie for cross-examination. Are you ready to cross-examine him, Mr. Ransom?

Mr. Ransom: We will be ready tomorrow.

The Master: Have you got any more direct testimony, I want to know?

Mr. Chambers: No, I have not today.

The Master: Have you any more witnesses?

49607 Mr. Chambers: No, not today.

The Master: Have you any more witnesses, I said?

Mr. Chambers: Yes.

The Master: Get them here.

Mr. Chambers: I cannot get them here today.

The Master: You must get them here.

Mr. Chambers: Not today, I cannot.

The Master: Then I will have to close your case. If you can go ahead and finish cross-examining these witnesses, Judge Ransom, I will close this case if they do not get other witnesses

49608 here.

Mr. Ransom: When you are prepared to do that we will—

The Master: I am prepared to do it any minute that they are not ready to proceed. We will cross-examine all the witnesses; I want them here right away.

Mr. Chambers: And I will telephone to Mr. Maltbie right away; shall I?

The Master: Yes, Dr. Bemis and all of them, and if you have not got enough testimony to proceed with I will close the case.

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Mr. Ransom: The trouble is that we had so much difficulty getting information from Mr. Maltbie about his tables that I am not really ready today, but I will go ahead.

Mr. Chambers: Am I to telephone Mr. Maltbie?

The Master: Yes, you telephone him and get the witnesses here, and I am going to hold Mr. Maltbie to the very last. Major Clark, you will have to make some effort to get these witnesses here or I will have to strike out their testimony.

Mr. Clark: I have. As soon as Dr. Weber comes to the office he will call me. That is all I 40700
can do at present. He seems to be on the train just now.

Short recess.

The Master: Mr. O'Brien, do you want to go on with Mr. Edgerton now, or do you want to take a recess now until half past one to talk to him?

Mr. O'Brien: I think that would be perhaps better, your Honor.

The Master: When I sent for you I had intended to make an announcement of an adjournment until half past one, but I want to notify all counsel to have all witnesses here for cross-examina- 40701
tion and, if there is any, for direct-examination.

Mr. O'Brien: Won't you make that two o'clock?

The Master: No, I have wasted an hour sitting around now.

Mr. O'Brien: That was not my fault; because I said when I came in this morning that I would have Dr. Bemis on call for Judge Ransom.

The Master: But you said he would be here at twelve o'clock, and he was not.

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Mr. O'Brien: I went out when Mr. Boylan was on the stand and told the Doctor that Judge Ransom would take him up at two but perhaps he better be around at twelve. That was the state of the record when you told me that you wanted him over.

The Master: I am going to adjourn until two o'clock. It is now only about half past twelve. I am doing that to give counsel for the defendants every opportunity to get all these witnesses here, both for cross and for direct, if there are any more to be called on direct, so that we will
40703 have no more waste of time during the day. I will adjourn to two o'clock.

Mr. O'Brien: At that time, or sometime today, I am going to tell your Honor of my protest at the way we have been treated.

The Master: What is the trouble?

Mr. O'Brien: Why, the drive of the last two weeks has made it absolutely impossible to protect the interests of our clients.

The Master: I thought it was today.

Mr. O'Brien: I am confining my protest to the time prior to this. The record speaks for itself. You cannot do it.

40704 Mr. Chambers: For a trial lawyer, he cannot stay in court all day and expect to properly prepare his case.

The Master: You had better get your witnesses here right away, Mr. Chambers.

Mr. Chambers: I cannot get them here right away.

The Master: Who else had you in mind?

Mr. Chambers: I would rather not disclose who I had in mind, but I had a couple of them in my mind.

The Master: I shall direct you to disclose

them—disclose the names of the witnesses that you think you will need. 40705

Mr. Chambers: I do not know their names.

The Master: Who are they by other form of identification?

Mr. Chambers: They are to be called in regard to operating expenses.

The Master: Who are they, where do they come from; whom do they represent?

Mr. Chambers: Some of our own people.

The Master: What do you mean by your own people?

Mr. Chambers: It might be Dr. Weber and it might be some of the other accountants. 40706

The Master: Is that the best information you can give me?

Mr. Chambers: Just now, yes, until I have time to talk it over with them.

The Master: Mr. O'Brien, have you any other witnesses that you expect to call?

Mr. O'Brien: Well, your Honor, here is the way I look upon that proposition: Apparently Judge Ransom is going to open up his case, and you have already indicated that equity is open all night, that the latch string is always out.

The Master: Within certain limits. 40707

Mr. O'Brien: Within certain limits. It has a night and day license.

The Master: Within certain limits.

Mr. O'Brien: And you are going to allow Judge Ransom to complete the story of 1919.

Mr. Ransom: If he wants to.

The Master: Yes.

Mr. O'Brien: Whether he wants to delve into 1920, I do not know; that would mean that the defendants, of course, would have a corresponding right to meet whatever is put in. I am rather

inclined at this time to reserve the question of covering the whole of 1919 and the future, so far as prophesy may be made, to such time as he closes his case.

The Master: All right. Mr. Clark, have you any further witnesses?

Mr. Clark: Not at this time.

Mr. Ransom: I do not think Mr. O'Brien should rely on any time as the duration of the rebuttal.

Mr. Clark: I do not know of any at this time,
40709 but I do not want to foreclose myself.

The Master: All I can say, gentlemen, is that I shall expect all the witnesses that the defendants expect to call to be here at two o'clock, or to be within such close call that there will be no more delay, so that we can finish this case.

Mr. Chambers: There has not been any delay that I know of.

The Master: Well, I have just delayed one whole solid hour.

Mr. Chambers: On a holiday, once, after beginning at 9:30 in the morning.

Mr. O'Brien: You are not sitting on Washington's Birthday without a protest from me.
40710

Recess.

Afternoon session.

EDWARD W. BEMIS, recalled.

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Dr. Bemis, have you studied the reserve for renewals and contingencies and amortization of capi-

tal at Astoria, as bearing upon the investment there and the amount that should be paid by the Consolidated Company as interest or rentals and an included in the price of gas paid by the Consolidated to the Astoria Company?

Mr. Ransom: Objected to as incompetent, not a proper subject of direct-examination for this witness, the examination of this witness was supposed to have been closed on direct.

The Master: What is the purpose of it?

Mr. O'Brien: This goes to the question of how much of that seven per cent, the specific amount 40712
alleged to be seven per cent of the investment which might properly be paid by the Consolidated Gas Company to its subsidiary, the Astoria Light, Heat & Power Company.

The Master: No, I won't take Dr. Bemis' opinion on that subject, that is a matter of argument addressed to the Court.

Mr. O'Brien: Well, you stated on page 12,381 of the typewritten report of February 17th that if we had any evidence at all that we wanted to offer bearing on the investment or the value of the Astoria plant as affecting the amount that the Astoria Company charges to and the Con- 40713
solidated Company pays the Astoria Company for gas made at that plant, you would take it.

The Master: Well, I still say so now, but I won't take what you are offering.

Mr. O'Brien: Well, you have got in your mind a certain book value of that plant, and the testimony of the witness is designed to bring out just the elements, the items, the ingredients of that amount on which they are paying seven per cent.

The Master: I will let you bring out the items, but I won't let this witness say on what items that seven per cent should be figured. I will let you bring out the items, and very glad to have you do it.

Mr. O'Brien: Exception. Of course, your Honor's ruling—I take an exception, because this is a matter of expert testimony, a witness can testify as to whether they have certain funds set up under one column that are in fact the depreciation reserve, and under the ruling of the United
40715 States Supreme Court you may not include in the rate base a reserve for depreciation.

The Master: I am going to let you prove what you want to prove, but I won't let you ask the question which you ask, that is the only difference between you and me.

Q. Will you give Dr. Bemis, the items that make up the reserve for renewals and contingencies and amortization of capital at Astoria?

Mr. Ransom: I object to it as incompetent.

The Master: I assume from the fact that Dr. Bemis has taken the Sangster exhibit, that he will find those figures in the Sangster exhibit. Is that
40716 right, Dr. Bemis?

The Witness: Yes.

The Master: Then I will find it myself.

Mr. O'Brien: But, your Honor, the question of analyzing the items on the Sangster exhibit, you are not going to do that.

The Master: Why not?

Mr. O'Brien: This witness is going to do it.

The Master: Why should not I do it?

Mr. O'Brien: Well, you can do it in your own way, but there are certain items set up in these books that we contend may be interpreted by one

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who is accustomed to and knows and is an expert upon accountancy methods of gas companies, and the practices of public utilities under the laws of the several states relating to public utilities.

The Master: How about New York State?

Mr. O'Brien: In New York State, of course, included.

The Master: Do you mean to say that Sangster does not properly set up the items in his exhibit?

Mr. O'Brien: I do not say that. I mean to say that we have a right through this witness to interpret items that are on their books, and if they 40718
are called by one name, to say that they are in effect another kind of an item; in other words, if they have got a reserve there and they call it by one name and it is in fact either in whole or in part a contingency fund for depreciation, a reserve for depreciation, then you should know it, and then you must deduct that from the rate base under the rulings of the United States Supreme Court, and if you do not, you are going to commit a reversible error.

The Master: Have you any particular item in mind?

Mr. O'Brien: Well, it goes to the question of 40719
the depreciation fund.

The Master: I would like to see what it is that you have reference to.

Mr. Ransom: There isn't any such thing.

The Master: Dr. Bennis calls my attention to a Sheet No. 23, headed, "Astoria Light, Heat & Power Company, Summary of Depreciation Reserve for the Twelve Years 1907 to 1918, Inclusive," which contains columns, the first one being Renewals and Contingencies, the second Contingencies, the third Renewals and Replacements,

40720

the fourth, Total Permanent Reserve, fifth, Accrued Amortization and the last column being the total. Is it your contention, Mr. O'Brien, that I must exclude from my calculation of the rate base certain of those items?

Mr. O'Brien: Yes.

The Master: Which ones?

Mr. O'Brien: Such of them—the witness is going to tell you what in his opinion ought to be excluded from that item. Of course, if they have set up—

Mr. Ransom (interrupting): These defend-
40721 ants cannot claim that these accounts are something other than what they purport to be.

The Master: Well, if you can't tell me what items Dr. Bemis says are Contingencies—

Mr. O'Brien (interrupting): Do you want the specific amounts?

The Master: No, the columns that you say I must exclude, if I cannot find it out from you, I am going to just have the witness tell me what the Contingency is.

Mr. Ransom: You cannot put the Contingency in the form that is not in the sworn testimony.

The Master: Yes I can.

40722 Mr. Ransom: Exception.

The Master: What is the contention, that the—

Mr. O'Brien (interrupting): That the Contingency item of $2,886,165.67 and the Renewal and Replacement item of $67,561.83 should not be included in the rate base.

The Master: Now I understand the contention. I do not think we need any more of it.

Mr. O'Brien: Well, you will permit me to make my record, your Honor?

The Master: I thought you had made it by asking the question.

Mr. O'Brien: No, I have taken exceptions to your Honor's rulings, but I have got a right through a witness to interpret items.

The Master: No.

Mr. O'Brien: Set up in the books, bookkeeping language is one, and they can put in something in another form—

The Master: Well, don't you understand contingencies to mean the reserve set up against contingencies?

40724

Mr. O'Brien: It is nothing to me more than a depreciation fund.

The Master: Don't you understand renewals and replacements to mean a reserve set up to renew and replace articles or items?

Mr. O'Brien: That is the general acceptation of that term.

The Master: Well, isn't it here?

Mr. O'Brien: That depends upon the analysis you make of this account. You have got to find out how much was set aside just as with the parent company there has been set aside by years, and if they have got a fund, call it by any name you want, a rose or something that smells as sweet, any other name, any account, if they have got money that was set aside to take care of depreciation, call it a contingent fund if you will, your Honor, you absolutely must separate that from the base upon which a fair return is computed, and so as to the Astoria, the same proposition.

40725

The Master: Ask your question.

Q. How much has accumulated in this reserve on December 31, 1918?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained, upon the ground that the Sangster exhibit to which the witness refers is before the Master.

Mr. O'Brien: Exception.

Q. Have you during many years, during the experience you have narrated in your testimony, studied the question of whether such reserves should be included in a rate base?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained, calling for a conclusion of law.

407 27 Mr. O'Brien: Exception. I contend that this is a matter of opinion testimony.

The Master: The master has ruled that it calls for a conclusion of law.

Mr. O'Brien: Exception.

Q. What is your conclusion in the case of the Astoria Company?

Mr. Ransom: Objected to as incompetent.

The Master: The question is not finished, I do not think.

Mr. O'Brien: Exception.

The Master: Was that your question?

Mr. O'Brien: That follows along the other

407 28 questions.

The Master: Objection sustained.

Q. Has the Astoria Company or the Consolidated Company officially stated the purpose of the contingency fund?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Now, your Honor, I don't know whether you get the purpose of this.

The Master: Yes, I do. Dr. Bemis, have you ever analyzed this contingency account? Have you ever looked at the books?

The Witness: No, I have looked at some of Sangster's working papers.

The Master: Have you ever looked at the books?

The Witness: No.

The Master: Have you looked at the items that make up this contingency reserve?

The Witness: No.

The Master: Did you ever look at the books?

The Witness: No.

The Master: Did you ever look at the items on the books?

40730

The Witness: Only as itemized by Sangster.

The Master: I won't take them.

Mr. O'Brien: Your Honor, what I am trying to bring home to you is this, that a company is bound by its statements that they may have made.

The Master: Where?

Mr. O'Brien: With reference to—official statements with reference to the purposes of this fund, and that is what I am asking the witness.

The Master: Made by whom, when and where?

Mr. O'Brien: Made by the company.

The Master: Who?

Mr. O'Brien: Officially.

40731

The Master: Who?

Mr. O'Brien: The Astoria Company.

The Master: How did they make it officially?

Mr. O'Brien: Dr. Bemis—

The Master: Can't you answer that, Mr. O'Brien? How did the Astoria Company make any official statement?

Mr. O'Brien: In reports to the Public Service Commission.

The Master: Well, then, let us have the reports. I won't have Dr. Bemis tell me what is in that report. That is why I asked you the question.

40732

Mr. O'Brien: I will ask counsel to produce the reports of the complainant.

The Master: They can't have them here all the time, they are in evidence.

Mr. Ransom: Mr. Clark has had them most of the time. I have the 1918 report here.

Mr. O'Brien: Have you got Mr. Addicks' report yet on the excerpts from the minutes?

Mr. Ransom: Yes, I gave them to you this morning.

Mr. O'Brien: You gave me nothing.

Mr. Ransom: They are right here for you, you

40733 have them.

Mr. O'Brien: You never handed them to me.

Mr. Ransom: I handed them to you.

The Master: I don't want this cross-fire argument.

Mr. Ransom: I have the 1918 report.

Mr. O'Brien: I am trying to illustrate to your Honor just about the way they are trying the case.

The Master: Well, you are illustrating it very well; likewise you are illustrating very well how you are trying the case when you say that papers lying before you on the table, you don't know what they are, that you did not see papers that are

40734 lying on the table before you.

Mr. O'Brien: I never saw those papers until I sat down here this afternoon, three or four minutes ago, to begin the afternoon session.

The Master: Go on, next question of Dr. Bemis.

Mr. O'Brien I am going to prove what I say, and I will show that I know what I am talking about. Would you look at the outside of this and say that that indicated that they are what I asked Mr. Addicks to produce?

The Master: I won't look at them at all.

Mr. O'Brien: Don't you think counsel would hand them to me and tell me what they are?

The Master: I won't look at anything. Go on and ask Dr. Bemis what you want.

Q. Has the Astoria Company or the Consolidated Company—I am repeating your Honor, just to have this record connected—officially stated the purpose of the contingency fund.

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Where did this statement appear? 40736

Mr. Ransom: Objected to as incompetent.

The Master: That I will allow. Where did a statement appear?

A. Page 65 of the 1916 report to the Public Service Commission.

Mr. Ransom: I move to strike out the answer on the ground the Consolidated Company is in no way responsible for such a report and does not furnish it.

The Master: Well, I will allow that to stand.

Mr. Ransom: Well, it appears as though the company had stated something in this report.

The Master: Oh, but it is not going to appear 40737
in the record that way.

Q. What company did you refer to?

Mr. Ransom: Objected to as incompetent.

A. The Consolidated is here quoted verbatim.

Mr. Ransom: I move to strike out that statement.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. What was the statement, will you read it?

Mr. Ransom: Objected to as incompetent, highly improper.

The Master: Objection sustained. The original report is the best evidence.

Mr. O'Brien: Well, I can supply that afterwards, your Honor.

The Master: This simply purports to be an extract or summary of some statement, some report, and I won't take it.

Mr. O'Brien: Well, I will supply it afterwards.

The Master: No, your time to do it is now.

Mr. O'Brien: I call upon the counsel to pro-
40739 duce their report of that year.

Mr. Ransom: Are you addressing your remarks to Major Clark?

The Master: What year?

The Witness: 1914, quoted in the 1915 return.

The Master: Counsel says he hasn't got it here. Now, the original reports are in the possession of Major Clark or the Public Service Commission.

Mr. O'Brien: Is your Honor going to exclude this where we have the quoted statement in a public record?

40740 The Master: I certainly am.

Mr. O'Brien: In spite of my promise to connect it before the afternoon is over, by production from the office of the Public Service Commission of the original return?

The Master: I certainly will. If you have any statement in a report filed with the Public Service Commission, you produce that so that other parts of the same report may be referred to in explanation.

Mr. O'Brien: Well, will Major Clark kindly send for the 1914 returns of the Consolidated Company?

Mr. Ransom: You had better get the 1918 report, too, while you are at it.

Mr. O'Brien: I would rather have all these reports brought up, we may go into them. The one I spoke of particularly is the returns for 1915, Consolidated Gas Company. I take an exception to your Honor's ruling.

Q. In your judgment, Mr. Bemis, should a fund of nearly $3,000,000 accumulated out of earnings 40742
for renewals, replacements and contingencies or casualties such as those caused by fire, flood, earthquake, insurrection or riot or any other hazard be included in the rate base?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained as calling for the legal conclusion of the witness.

Mr. O'Brien: Exception.

Q. Assuming that a fund of approximately $3,000,000 was accumulated by the Astoria Light, Heat & Power Company and had been accumulated out of earnings for renewals, replacements and contingencies or casualties such as those caused by fire, 40743
flood, earthquake, insurrection or riot or any other hazard, in your opinion should such amount be included in the rate base upon which for that company a fair return might be computed?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained, the question calls for the legal conclusion of the witness.

Mr. O'Brien: Exception.

Q. Dr. Bemis, are you familiar with the engineering standards of unaccounted for gas per mile of main reduced to a three inch standard?

40744 Edward W. Bemis, Direct.

Mr. Ransom: Objected to as incompetent, immaterial, no bearing on the issues of this case, the witness in no way qualified to pass on operating questions, no experience along those lines.

The Master: Objection sustained.

Mr. O'Brien. Exception.

Q. Are there generally accepted standards in the engineering world of unaccounted for gas reduced to a three inch standard?

Mr. Ransom: Objected to as immaterial and incompetent.

40745 The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Have you made a comparison on that basis of the unaccounted for gas in New York in 1918, as compared with Chicago, Boston, the Public Service Corporation of New Jersey and the City of Washington, D. C.?

Mr. Ransom: Objected to as incompetent, immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What does the comparison show?

Mr. Ransom: Objected to as incompetent, im-

40746 material.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What does the comparison show, if anything?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Have you studied the number of meters per service and the number of services per mile of main per thousand feet of gas in New York City, as compared with other large cities?

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Are you familiar with the engineering standards, the engineering conclusions that may be drawn and should be drawn from the facts that you have discovered?

Mr. Ransom: Objected to. Immaterial, incompetent, vague and meaningless.

The Master: Same ruling.

Mr. O'Brien: Exception. 40748

Q. What are those conclusions?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Aside from your study of the accounts and statistics of public utilities, and such experience as you have already described, what special engineering training have you had, other than that you have previously described, bearing upon your qualifications as a witness in the engineering problems in this case?

The Master: I won't allow the question, because I have given counsel for the defendant Swann the fullest opportunity to develop the qualifications of Dr. Bemis, and I won't take anything more on that line. 40749

Mr. Ransom: He talked 40 minutes about himself the other night.

Mr. O'Brien: I want to state your Honor, that the night that Dr. Bemis was called for direct-examination that it was over my protest, it was after we had gone through a gruelling day's work from 9:30 until 6 o'clock, at which time you stated that we would be required to go on from eight until ten-thirty.

The Master: Yes, and I told you long before six o'clock.

Mr. O'Brien: Over my protest and after my statement to your Honor of various matters that prevented me from properly taking care of the interests of my client by being forced into an examination and further trial that day. I call that to your attention at this time, when you say that we cannot ask the witness any further as to his qualifications.

The Master: Yes, that is noted on the record,
40751 and my ruling stands.

Mr. O'Brien: You have previously stated today that equity's door is always open.

The Master: Yes.

Mr. Ransom: Especially at night.

The Master: I have that in mind, too.

Mr. O'Brien: Exception.

Q. Dr. Bemis, in connection with the experience that you have outlined in your testimony, have you considered and made a study of the effect which wear and tear and inadequacy and obsolescence and changes in the art have and have had upon the properties of gas companies, and have you made a study
40752 of the property, the plant and equipment and other properties of the complainant company, with a view to forming an opinion as to what the depreciation has been in those properties?

Mr. Ransom: Objected to. Here is a man who never built or ran a gas plant or any system of distribution of gas or any part of it, no possible engineering qualifications for expressing an opinion upon the particular matter indicated by that interrogation.

The Master: I will let the witness answer that question yes or no.

Mr. Ransom: Exception.

A. Yes.

Q. What do you understand by depreciation?

Mr. Ransom: Objected to as incompetent.

The Master: I will allow it.

Mr. Ransom: Exception.

A. The loss of service life. The loss in life or serviceableness, or life in service of a part of or all of the property.

Q. How in your opinion is this to be determined?

Mr. Ransom: Objected to as incompetent, the witness has no qualification. 40754

The Master: Is what to be determined?

Mr. O'Brien: This depreciation or—

The Master (interrupting): The amount of the depreciation.

Mr. O'Brien: As the witness said, in serviceability or life.

The Master: The quantity of it.

Mr. O'Brien: The fact first.

The Master: All right.

Mr. O'Brien: The extent of it.

The Master: Well, which?

Mr. O'Brien: Well, it depends upon— First the fact. 40755

The Master: Well, let's have the fact first. How do you determine the fact that there is any depreciation or loss of life, serviceable life?

Mr. Ransom: Objected to as incompetent, the witness has no qualifications.

The Master: I will take it.

Mr. Ransom: It is allowing an entire outsider on these things to come in and guess and speculate and theorize. Exception.

The Witness: By wide observation and study of the influences of changes in the art, of in-

adequacy as well as wear upon different parts of the gas property, and with special reference to large cities.

Mr. Ransom: I move to strike out the testimony as not responsive.

The Master: Motion denied.

Q. And in the case of the complainant company, how is this principle of depreciation, in your opinion, to be supplied?

Mr. Ransom: Objected to as incompetent, indefinite.

40757 The Master: No, that calls for a legal conclusion that I won't take. I will let you ask the witness what examination he has made of the property of the complainant company, and what he knows about it, and what his opinion may be to the life of it.

Q. What in your opinion is the life of the mains system of the Consolidated Gas Company?

Mr. Ransom: Objected to.

The Master: The objection is sustained. Counsel overlooked one part of my statement, namely, questions bringing out the witness's familiarity with the subject-matter. There is

40758 nothing on the record that shows that yet.

Q. Will you state in brief what examination you have made of the property of the complainant company and its books and records?

The Master: No, never mind its books and records.

Q. And other data that has a bearing upon the question of depreciation?

Mr. Ransom: Objected to.

The Master: No, I won't take that.

Mr. Ransom: Objected to, unless the question is limited simply to examination of physical property.

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The Master: I will so limit it. If you are going to prove by this witness his opinion of the depreciated condition of these plants and mains and services, I will let you ask this witness what he knows about it by visual examination.

Mr. O'Brien: May I ask your Honor a question right here? Why didn't you exact that of the witness Allison?

The Master: No. You may ask him—

Mr. O'Brien (interrupting): You remember I asked him this very question.

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The Master: Yes, you may ask me that question, and I won't answer it. I am telling you what I will allow you to ask this witness.

Mr. O'Brien: I am excepting to your Honor's ruling.

The Master: That is proper.

Q. What examination, if any, Dr. Bemis, have you made of the properties of the complainant company?

A. I have visited their manufacturing stations, and most of their holders and yards and office buildings. I have known of the situation somewhat as it was in 1906, when I visited the manufacturing stations.

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The Master: Let us get down to 1918 and 1919, I am not concerned about 1906.

The Witness: I have visited, during this case, as I first remarked, the plants and holder stations.

The Master: Tell us just what examination you made of them, how far you went into them. How long did you stay at any plant of the complainant company, what plants did you stay in, how much did you look at them, or what examination did you make, so I can tell whether your opinion is helpful to me or not.

The Witness: Well, I spent on two or three different occasions an hour or two each time in the 14th Street station and the 42nd Street station and the 21st. I visited the 99th Street station but once.

The Master: How long did you stay there?

The Witness: I visited some of these holder stations once at Kingsbridge and the 44th Street, West 44th Street and West 65th Street, and I was up at the Astoria Tunnel station on the Bronx side, and the station I think a little this
40703 side of it, and I also went over to Astoria.

The Master: We are talking about Consolidated plants now, not Astoria.

The Witness: Then I have studied the data as to the age of these properties.

The Master: What has that got to do with their condition, how old they are?

The Witness: A good deal to do with it often. As the art progresses you would not build the same plant.

The Master: Can't you see whether the plant is not up to date without knowing when it was built?

40704 The Witness: Yes.

The Master: It reminds me very much of an expert witness, one of these surface railroads once produced on me in negligence case, where a man had a compound fracture of the arm, I think it was, or leg, and he undertook to swear that it was necessary for him to determine the extent of the injury by asking the man how he came to be hurt, and unless he knew how he came to be hurt he could not tell me what the injury was, could not say it was a compound fracture

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Perfect rot to say that you have got to know how old a plant is to know whether it is a modern plant or whether it is antiquated. I won't take such testimony.

Mr. O'Brien: Well, then, you are going to set your judgment up against the judgment of the Court?

The Master: I will take my judgment on that kind of an issue in spite of any decision of any Court. I will not take any proof of any witness that in order to determine whether a plant is antiquated he has got to know when it was built.

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Mr. Ransom: That is only the method used by those that do not look at the plants.

Mr. O'Brien: Well, I move to strike out at this time the testimony of the witness Miller and the witness Allison.

The Master: The motion is denied at this time.

Mr. O'Brien: I except. I move now to strike out the testimony of the witness Allison from the record in this case.

The Master: The motion is denied at this time. I told you I would entertain motions to strike out the testimony when all of the proof was in.

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Mr. O'Brien: Exception. We have the testimony, your Honor—I don't know whether you realize it, but you put that proposition in a different way than it was put to the witness a minute ago.

The Master: Well, that is a habit I have.

Mr. O'Brien: The question of the age of this plant has got to have a bearing upon its serviceability and future life, and if you have a conviction upon the subject, there is no occasion for our going any further on this with any witness.

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The Master: Go ahead and ask your question.

Mr. O'Brien: It don't serve any purpose. You have recited as we have gone along various convictions, and this apparently is one of them. If that was announced earlier, we would not have wasted any time with putting witnesses on the stand. The Courts have recited that, the United States Supreme Court put it down, and if you say you won't follow it, then you are Bolsheviki, you say you don't care what the Courts have said on that, and why should we have the hearings going on here before you in Federal Court of Justice.

40769 In view of the Master's ruling and expression as to his conviction upon the question of depreciation and the pronounced belief on his part, irrespective of what the Courts have held that he will not allow opinions as to the effect of the age of a plant, equipment, apparatus and property of a Gas Company to have any bearing on its depreciation or serviceability, I will not quiz the witness, catechise the witness any further upon that subject, and I will take an exception to your Honor's ruling.

The Master: To be perfectly fair to you, Mr. O'Brien, in order that you may not be misled,

40770 and because it is barely possible that you may have misunderstood me, I suggest that you have in mind that I have not made any such ruling as you have attempted to recite. I have said that I will not have this witness testify that in order to determine whether a plant is antiquated or not that he must know when it was built. I have ruled that unless a witness can say from observations that the plant is inadequate, that I will not take his testimony on that point. I have ruled that as a matter of fact a plant is or is not antiquated in accordance with what it shows

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to the eye of the witness, and whether it was built 20 or 40 or 100 years ago makes no difference, and that is all that I have ruled. Now, you can ask the witness any further questions or not, to suit yourself.

Mr. O'Brien: I have in mind not only what you have just said today on this subject, but the cross-examination that you put witnesses through on the question of depreciation.

The Master: I don't care.

Mr. O'Brien: I have in mind the argument—

The Master: I don't care what you—

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Mr. O'Brien: Just a minute, if your Honor please. I have the argument in mind that you entered into with the witness Hine on the witness stand, where you undertook to argue with him that if a given plant was producing the same amount of gas, giving the consumers the same quantum of return for the money as some other plant built at some other time, that that was the measure of depreciation, in other words I may not give it in precise language, but the idea was what it was doing today in the shape of serviceability that is to govern the question of any depreciation.

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The Master: Mr. O'Brien, I merely said what I did to set you right as to your decision not to ask any further questions. Now, if you have decided not to ask the witness any further questions because of other rulings I have made and other indications I have given as to how my mind is operating, that is your privilege, you can ask questions or not, to suit yourself.

Mr. O'Brien: Well, I am a bit confused when I look back through the vista of this trial and see what you have said on this subject and other

40772 subjects. I know you have made some expressions about the medicine man Allison, who did not see the plant, did not care to see it, said it was not necessary to see it.

The Master: What did I say about it?

Mr. O'Brien: Well, off the record—

The Master: No, on the record.

Mr. O'Brien: Well, on the record you listened to it and drank it in.

The Master: Yes.

Mr. O'Brien: Over our objection.

The Master: I said nothing about it.

40773 Mr. O'Brien: And I remonstrated time and time again, and you received the answers just the same.

The Master: I made no comments about his testimony.

Mr. O'Brien: But you let it go on the record.

The Master: Did I make any comment on it?

Mr. O'Brien: I do not recall that you did.

The Master: Well, you better read the record.

Mr. O'Brien: Then as to this disciple of immortality, this Alton Miller, formerly attached to the Gas Company, who went there in a flitting performance, looked and listened, put his ear to

40776 a piece of equipment—

The Master: I am going to let Dr. Bemis look and flit and listen, if you want to ask him the question as to what he thinks of the depreciation in these plants.

Mr. Ransom: Miller lived a lifetime with these plants, compared to what Dr. Bemis has done.

Mr. O'Brien: Miller never lived any lifetime longer than two years with any company.

The Master: If Mr. O'Brien doesn't want to ask you any further questions, I will turn Mr.

Bemis over to Mr. Ransom for cross-examination. We can't have this discussion all day.

Q. What in your opinion is the life of the mains that are owned by the complainant company?

The Master: Mr. O'Brien, don't you see that the witness has not said a word about looking at any mains, doesn't know whether there are mains? He talked about looking through their plant, and at some of their holders, and I am willing to let him testify, for what it may be worth, what he thinks the life of a plant is, but I will not let him testify to mains because he 40778
looked at holders.

Mr. O'Brien: But, your Honor, you are confining yourself to the witness's testimony of this afternoon, and you have already learned he was a Deputy Water Commissioner and everything, and during his career there was mains laid, and you have heard his testimony as to the City of Cleveland and his experiences everywhere—

The Master: Water mains.

Mr. O'Brien: Yes, water mains.

The Master: I am talking about gas mains.

Mr. O'Brien: He is qualified, without my asking him further questions, he is qualified now as 40779
to New York, as to the subterranean conditions in New York City, the character of the soil, the character of the various conditions that may or may not affect cast-iron pipe in the ground. I do not need to go over that again and make a special qualification of the witness.

The Master: Then you are talking just about cast-iron pipe, is that the idea?

Mr. O'Brien: Well, you cannot take up the mains to look at them. This same Mr. Miller is

giving testimony in countless cases on mains he never saw.

The Master: Well, I will let Mr. Bemis talk about mains he never saw, and we will get his opinion.

Mr. Ransom: I object to that.

The Master: Objection overruled. What is the life of mains under the surface of the streets of Manhattan?

Mr. Ransom: I want to get my objection on the record.

4078-1 The Master: I thought it was on the record.

Mr. Ransom: It seems to me that is going the limit, to let a witness like this try to swear away the property of a company in this manner. This witness has never laid a foot of gas mains anywhere, he has never had any experience or any responsibility for the laying of gas mains, never managed an enterprise of any sort except the giving of testimony against companies.

The Master: I will take it.

Mr. Ransom: Exception.

The Master: You are asked the question, Dr. Bemis: What is the average life of gas mains in

4078-2 the City of New York, in your opinion?

The Witness: For mains 8 inches and larger, I consider the life to be from 100 to 150 years; for 6 inches and 4 inch mains I consider the life to be from 50 to 75 years, owing to inadequacy.

The Master: And only that?

The Witness: Practically so. There is a little tendency to deterioration.

The Master: Next question.

Q. As to smaller sized mains?

The Master: Than 4 and 6.

Q. What is your judgment?

A. There are practically no smaller mains than 4, to any extent, in New York City, except service pipes.

The Master: How about 48 inch mains, will they last forever?

The Witness: 48 inch cast-iron mains, I believe, will last from 150 to 200 years.

The Master: Well, that is long enough for me. Go ahead.

Mr. Ransom: I move to strike out the testimony of this witness as to the life of mains, as hardly worthy of the dignity of testimony, pure guess and speculation, immaterial. 40784

The Master: Motion denied.

Mr. Ransom: Exception.

Q. What in your opinion is the life of the services of the complainant company?

Mr. Ransom: I object to the witness stating that, as wholly lacking in qualifications.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Services I believe have a life of from 25 to 35 years. They are small, subjected to danger of inadequacy and subject to electrolysis, both from the soil and from currents that attack small pipe more than large pipe. The renewal of service in other 40785 cities—

The Master: I don't want that.

The Witness: The renewal of services—

The Master: I don't want that. I have let you give your opinion as to the life. I do not want anything else.

Q. Now, as to meters, gas meters of the complainant company?

A. The gas meters pitting—

Mr. Ransom: This is over my objection?

The Master: Yes.

Mr. Ransom: Exception.

The Witness: The gas meters I believe, as to what I believe is called the meter, subject to the constant renewal and repair of its parts and mechanism, will last from 40—about 40 years.

Q. As to other parts of the meter?

A. They are being constantly renewed every four or five years, in small repairs, charged to repairs, included in the repairs and maintenance account.

Q. Now, as to buildings—

40787 Mr. Ransom: If this is merely the question, I want to object to it as incompetent, the witness has no qualification as to buildings in the City of New York.

The Master: Yes, I will let him answer.

Mr. Ransom: What type of building? Isn't there any limit to what a witness of this sort may speculate and theorize about?

The Master: I will take it.

Mr. Ransom: Exception.

A. Buildings such as are commonly in gas works in New York City have a life of from 50 to 75 years on account of the tendency to inadequacy and change

40788 in the character of the work. The building itself might last longer.

Q. Now, as to plant and equipment, works equipment, to be more specific, what in your judgment is the average life of this part of the complainant's property?

Mr. Ransom: Objected to as incompetent, this witness has never bought or sold or managed or anything else.

The Master: I will allow it.

Mr. Ransom: He hasn't any knowledge whatever of equipment of this sort.

The Master: You are asking for the life of the equipment. I will take it.

Mr. Ransom: The only kind of factory he has ever run has been a factory to produce testimony for cases of this sort.

The Master: I will take it. What life do you give to a manufacturing plant or works?

Mr. Ransom: Exception.

A. Dependent on the nature and character of the building.

The Master: Talking about the Consolidated Gas plant? 40790

The Witness: Yes, Consolidated Gas Company, from 50 to 75 years, varying with the—

Q. (Interrupting.) Varying with what?

A. The different buildings.

The Master: How about holders?

The Witness: The smaller holders, from 50 to 75 years, the larger holders, of a million and over, I should place a life of a hundred years on them.

The Master: Now, have you covered everything? Anything else for Dr. Bemis now?

Q. Dr. Bemis, have you made over a period of years a study of the rise and fall in the prices of materials, prices of labor in connection with public utilities and including gas companies? 40791

A. Yes.

Mr. Ransom: Objected to.

Q. Have you kept in touch in various ways with the cost of labor and material in and around New York City?

A. Yes.

Q. Including such as would be used and necessary in the conduct of a gas industry?

40792 Edward W. Bemis, Direct.

A. Yes.

Q. Are you prepared at this time to state what in your opinion is to be the immediate future, so far as the relative prices of the material entering into the gas making industry is concerned?

Mr. Ransom: Objected to as incompetent.

The Master: I will allow it, the witness says he has been studying the trend of prices and has kept in touch with it, and I will take his opinion.

Mr. Ransom: But a man does not acquire qualifications merely by what you might call re-
40793 mote physical studies, as the United States Supreme Court pointed out in the case of this very witness, in the Des Moines case, there is a great deal of difference between the actual knowledge that a man gets by having an experience in respect to these things, and the kind of a rough approximation of information that he may get by being perpetually, as the Court said, on the lookout for things that may help him testify in behalf of defendants.

The Master: I don't agree altogether with the language used by the Master in that case, and I will take the witness's answer.

40794 Mr. Ransom: Exception. I object further on the ground that so far as appears in this case, the only thing that this witness knows anything about the cost of is the wages of cadet engineers and statisticians.

The Master: Objection overruled. Give us your opinion as to the immediate future, the trend of prices of material and labor.

The Witness: I believe that there is going to be a downward tendency, not marked, but to a mild degree, because of—

40795

The Master (interrupting): No, I don't want because. You have given your opinion.

Q. At what price do you believe gas oil will sell for during the year 1920?

The Master: I won't take that.

Q. In New York City?

The Master: I won't take that, that is purely speculative, that is the wildest kind of a guess, and I won't take it. I have not taken it from any witness. I have let this witness say that in his judgment there would be a downward tendency, not marked, as the witness puts it. Now, that is all I will take.

40796

Mr. O'Brien: I don't know what is working in your mind. The Master says his mind is always working.

The Master: I thought I just told you how it was working, and I have let Dr. Bemis say that in his opinion, there would be some going off in the price, not marked, as the witness put it. I won't let him guess at what the price of oil is going to be next year or this year or any other time.

Mr. O'Brien: Exception. That is all on the direct.

40797

EDWARD W. BEMIS, recalled:

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Bemis, have you—

The Witness: There were two figures transposed in the first line of page 4-A which did not affect any totals.

Q. Some more corrections in your exhibits?

The Master: That is what he says, what is the use?

The Witness: I want to say, the exhibit relating to the Astoria Light, Heat & Power Company, Exhibit AA-464, page 4-A, the first line was given as $5,718,614.58. That should have been $5,178,614.58. In other words, two figures were transposed, but the totals are not affected.

The Master: A mistake in copying apparently.

The Witness: Yes.

407 09 Q. Professor Bemis, have you any record or memoranda from which you are able to state—

Mr. Chambers: Wouldn't it be proper to suspend the cross-examination while Mr. O'Brien is out of the room?

The Master: I told Judge Ransom to go ahead.

Mr. Chambers: But wouldn't it be proper to wait until he comes back; he was called out to the telephone.

The Master: I told Judge Ransom to go ahead. Two other counsel for the defendants are here.

408 00 Mr. Ransom: Also Mr. O'Brien's representative and assistant.

Mr. Chambers: Yes, but Mr. O'Brien is not here.

The Master: Go ahead.

Q. Have you any memoranda which will aid you to state how many times you visited any of these Consolidated plants during 1919 or 1920, or how long you stayed there?

A. I have such memoranda, but not with me at the moment; I could get it.

Q. You did not bring it with you?

A. It is in the City but it is not here.

Q. From your great experience in testifying in all these cases before, didn't you think it likely that you would be interrogated about that?

Mr. Clark: I object to that.

Mr. Chambers: I object to it, in the absence of Mr. O'Brien.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Well, I have a very clear recollection of the times. 40802

Q. How many times were you at the 42nd Street station, and how long did you stay there?

A. I recall two visits.

Q. Well, you were there on the 30th of July, 1919, were you, do you remember?

A. Oh, it would be my recollection that it was during the warm weather.

Q. The time you went there with Mr. O'Brien?

A. Yes.

Q. How long were you there then?

A. Well, I should say between one and two hours. I now recall having been there two times twice after that. I said twice in all. I have been there three times in all. 40803

Q. Would you say you were there two hours at the time you were there with Mr. O'Brien?

The Master: He said between an hour and a half and two hours.

A. Between one and two hours, I said.

Q. You are clear that you did not arrive there at 4:50 and leave at 6:20 in the afternoon?

The Master: Well, that would be according to his testimony, that would be about what he says.

A. That is quite possible.

The Master: That is about right from what you say, isn't it?

The Witness: It is not at all inconsistent with what I said.

Q. What other times were you there at 42nd Street, and when?

A. I was there twice after that, once two or three weeks before Christmas.

Q. About December 15th?

A. Very likely, I should say about that time.

40805 Q. When you were there with Mr. Polk and Mr. Little?

A. Yes.

Q. How long do you say you were there then?

A. I should say somewhat over an hour.

Q. How much over an hour?

A. I could not say.

Q. What other time were you at 42nd Street?

A. I was alone about a week or two after Christmas when the plant was in operation.

Q. About January 15th?

A. Very likely. I don't remember the exact date.

Q. Will you say you were there over twenty-five

40806 minutes that time?

A. I could not say; it was somewhere between twenty-five and forty-five, I think, for I simply was there to go through the plant and see what changes had occurred through their starting operations.

Q. Did you do anything except go into the retort houses 1 and 2 and look at the coal handling?

A. I went out toward the dock to see how they were bringing in the coal.

Q. That is where the coal was handled?

A. Yes.

Q. And you went into two of the retort houses?

A. The only two in operation.

Q. You didn't go into the others?

A. The others were not in operation, and I did not go into them.

Q. How did you know they were not in operation?

A. I was told that was the only place where gas was being made.

Q. When were you at 14th Street—once at the end of July, in the summer with Mr. O'Brien, also?

A. Yes.

Q. Would you say you were at that plant over 40808
forty minutes at that time?

A. I could not say, but I would say about an hour, probably.

Q. When were you there again, about the 12th of December, with Mr. Little and Mr. Polk?

A. I was there somewhere in that neighborhood. That was just before they had started up making gas.

Q. How long were you there that time?

A. I think from an hour and a half to two hours. I was there again. I said twice at first, but I was there a third time also the same as at 42nd Street. I was there after they began to make gas, within two 40809
or three weeks after Christmas.

Q. About July 15th? How long do you say you were there that time?

A. A shorter time than the first time, somewhere between forty-five minutes and an hour, perhaps.

Q. That time did you visit anything except the retort house and the coal shed?

A. I didn't go into the purifying department at all. It was the part that would be most affected by starting up, the benches and the coal handling.

Q. That is, you went there to see them making gas?

A. To see how they were getting along with it.

Q. When were you at 21st Street? You were there in the summer with Mr. O'Brien, about the 1st of August?

A. Yes.

Q. Were you in the 21st Street plant over fifteen minutes?

The Master: You mean on that first occasion?

Q. On the first occasion.

40811 A. I think not, in the plant, but I think I was out where the holders were, and in the yards, around there for quite a little while.

Q. How long would you say?

A. An hour.

Q. You were with Assistant Superintendent Raabe all the time, were you not?

A. I don't remember the name.

Mr. O'Brien: No, that was not the name Richie, wasn't it?

Q. Well, would you say it is not a fact that you arrived there at 12:10 and left at 12:25?

A. That may be true, in the building, but in the

40812 holder station—

Q. The whole thing I mean.

A. I think I was there longer than that.

Q. When were you there next?

A. In the fall or winter, about December, I think?

Q. Were you there in December, or was it January?

A. Possibly January. It was during—one or the other of those two months. I think it was after Christmas, I remember it was after Christmas now, from certain things that happened, because they were making gas also at the time at the 14th Street station.

Q. January 15th, would that approximately fix the date?

A. It is quite likely, although I don't remember the exact date.

Q. And is it not a fact that you arrived on that day at 4:45 and left at 4:50?

A. If so, that was the second visit. I was there with engineers and stayed a longer time on one occasion. I remember one o'clock that I was there only a few minutes.

Q. You mean with Mr. Little?

A. Yes. 40814

Q. On the 15th of January didn't you go there with Mr. Little and stay just five minutes?

A. It is possible, but there was one occasion when I went through the plant with one of the engineers.

Q. Can you give any idea when, aside from that visit?

A. I was there with Mr. Little I think in the middle of December, and we spent quite a long time on the upper floor beside the generators. I should think I was on that floor an hour, and went all through the plant besides. I was there at least two hours. That makes three times I was there at that plant.

Q. You are sure about the December visit? 40815

A. I am positive. In all probability it was December, although it may have been the last of November, of course, but I think it was in December.

Q. How many times have you been at the 17th Street yards and how long did you stay there?

A. I was there with Mr. O'Brien in the first place.

Q. About the first of August?

Mr. O'Brien: And we saw pretty near everything that was to be seen, including the chickens and the bedstead in the shed.

The Master: Were you there with Mr. O'Brien?

The Witness: Yes.

Q. And stayed 20 minutes?

A. Well, I would say half an hour, somewhere in that neighborhood. I was there with engineers for a short time.

Q. Whom do you mean by that?

A. Mr. Little and Mr. Polk.

Q. When?

A. I think it was in December.

40817 Q. How long did you stay that time?

A. Well, I should say I was there—just the yard, I should think I was there from 15 to 20 minutes.

Q. When did you visit the Kingsbridge holder station and how long did you stay there?

A. I went by that station again, I might say, another time.

The Master: You mean 17th Street?

The Witness: 17th Street.

The Master: In an automobile?

The Witness: No, on foot, and stopped and looked in with one of the engineers, Mr. Little.

The Master: Who is Mr. Polk?

40818 The Witness: He is another engineer helping me in my work.

Mr. O'Brien: I can't see why we should waste any time about how long he stayed at the Kingsbridge holder.

The Master: I think it is perfectly proper in view of the testimony given as to depreciation, and so on.

Q. How long were you at Kingsbridge?

A. Once with Mr. O'Brien.

Q. And with Mr. Clark?

40819

A. Yes, sir. I think, in fact, Mr. Clark was with Mr. O'Brien on one or two other visits with me.

Q. How long do you say you were at Kingsbridge? More than an hour or more than half an hour?

A. I think I was there more than an hour.

Q. Would you say that you did not arrive there at 4:30 and leave at 5:20?

A. I would think that I was there somewhat longer than that, I would have said between an hour and an hour and a half.

The Master: That is a shade less than an hour, that Judge Ransom says.

40820

Q. Does that cover all your visits to Kingsbridge?

A. Yes.

Q. Now, how about 111th Street?

A. I go by the Kingsbridge station often and look at it from the railroad, I see it pretty clearly.

Mr. Ransom: Most of this is railroad knowledge.

Q. When were you at 111th Street and how long did you stay there? You were there in August with Mr. O'Brien and Major Clark?

A. Yes, I think that is the only time, when Mr. Little was there—I think that is the only time. I went up with Mr. Little and visited some of those plants on another occasion. I went up to 99th Street and examined there, but whether I went to 111th Street or not I am not sure, I rather think we did. Yes, we did. We went into a part of 111th Street at that time.

40821

Q. Do you say you were there more than half an hour in August, at 111th Street station?

A. Well, I could not say; perhaps half an hour.

Q. And the 111th Street yard, on that same occasion, were you there more than 20 or 25 minutes?

A. Somewhere in that neighborhood.

Q. Was that your only visit to the 44th Street yards?

A. My recollection is, yes, I went there again with Mr. Little after visiting 69th Street.

Q. When do you fix that time?

A. It was in December.

Q. How long do you say you stayed then?

A. Well, three-quarters of an hour.

Q. How many times have you been at the 44th Street station?

A. Once.

40823 Q. That was in December?

A. I think so.

Q. With Mr. Little and Mr. Polk?

A. Yes, sir.

Q. Mr. Polk went around with you quite a good deal on these trips?

A. Very often.

Q. Is it true that at the 44th Street station you arrived at 12.35 and left at 1.24 on this visit?

A. I think it was a little longer than that, but there were nothing but some big holders there, and we did not spend much time there.

Q. You did not look at the exhausters and ma-

40824 chinery and engines?

A. We went into the buildings.

Q. You think you were there longer than 5 minutes?

A. I should say ten or fifteen minutes.

Q. How about 69th Street? When did you first visit 69th Street?

Q. I was there with Mr. Little. That is the visit I distinctly remember, in December.

Q. You were not there before December?

A. I don't recall, no.

Q. Is it not a fact that you were not there before January?

A. Well, it was December or January.

Q. That is the time you went there, about January 13th, with Mr. Little?

A. Probably, I should say along in that neighborhood.

Q. How long were you there that day? Do you say you were there more than half an hour?

A. I can't recall now, an hour or an hour and a half.

Q. Is that the only time you were in 99th Street? 40826

A. The only time I remember now.

Q. So far as manufacturing plants and holder stations are concerned, does the testimony which you have just given comprise all of your visit to manufacturing plants and holder stations of the complainant company during 1919 and 1920?

A. All that I recall, except that you may not have mentioned—when I was there with Mr. O'Brien I was thinking I went to one or two of the stations, one or two shops that you have not mentioned.

Mr. O'Brien: I wish counsel would call me as a witness on these visits.

Q. Mr. Bemis, you have no engineering degree? 40827

A. No.

Q. Have you ever erected any gas plant or any part of a gas plant?

A. No.

Q. Have you ever managed a gas plant?

A. No.

Q. Have you ever been employed in any capacity in any private industrial enterprise?

Mr. O'Brien: I object to that as vague.

The Master: Objection overruled.

A. Well, not since I left college that I recall. I

have been doing a great deal of teaching and public work.

Q. Did you ever personally keep a double entry set of books for a mercantile establishment?

A. No.

The Master: Did you ever keep any kind of books for a mercantile establishment?

The Witness: No.

The Master: Or manufacturing establishment?

The Witness: No.

The Master: Or any other kind of an establish-

408,29 ment?

The Witness: I never kept books.

Q. You stated the other night that you had appraised this or that property. Do you mean that you made the inventory and ascertained and applied the unit market prices?

A. I had charge of the whole thing, engaged the force and supervised the methods.

Q. You employed the engineers?

A. The engineers and accountants, and directed the methods of investigation, the treatment of depreciation, and the question of overhead.

Q. I am asking you whether you personally made

408,30 the inventory?

A. I directed the way in which some of it should be done, and had general supervision of it all.

Q. You never laid any gas mains?

A. No.

Q. Did you ever testify in any case in favor of an increase in public utility rates?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I have advised in cases, but I don't know that it has been in the form of testimony.

The Master: The question is, did you ever testify in favor of an increase?

The Witness: I don't remember testifying; I remember advising and bringing it about.

The Master: The question is, did you ever testify?

The Witness: I don't remember any now.

Q. Did you ever testify as a witness for a gas company?

A. No.

Mr. Chambers: I don't think he would be permitted to testify whether there should be an increase or not. He could testify to the facts. 40832

Mr. Ransom: He claimed to have testified to everything under the sun, except this.

Q. Now, in your Exhibit AA-449, in arriving at what you call total yearly labor expense you show, $881,461.23?

A. Yes.

Q. You have an item, one-half of repairs and other expenses (Sangster's statement No. 2), $300,698.60, the details of which you purport to give in a footnote. Why did you not include in this item the item of miscellaneous works expense, amounting to $110,453.78, included in Mr. Sangster's tables in that connection? 40833

A. I thought, I believed that that was included in his general expenses and labor in the first two items.

Q. Will you find it in there? You recognize miscellaneous works expense as a labor expense, do you not?

A. Largely; there are some materials. Well, I thought that item was included.

Q. You find it is not, don't you?

A. I am not sure either way up to date.

Q. Well, it should be included, shouldn't it, in one place or the other?

A. It should be included in one place or the other. It would make but a very slight addition; it was for a month and three-quarters.

Q. Well, you call $110,000 very slight?

A. A month and three-quarters proportion, if it should be included, which I don't say without taking more time than I have now, if it should be included it would be less than $40,000 a month.

Mr. Ransom: I move to strike out his statement as to how much it would be. It is a commentary on the inaccuracy of his tables.

40835 The Master: I understood you to say it should be included.

The Witness: If it is not.

The Master: If it is not?

The Witness: If it is not.

Q. Can't you say whether it is included or not?

A. Not absolutely and certainly, no.

The Master: Well, I can tell by looking at the Sangster exhibit.

Mr. Ransom: Well, I find that it is omitted.

Q. Where did you get the first figure on your Exhibit AA-450, the Consolidated Gas Company working capital in 1918, appliances in stock, which you give

40836 as $6,000,430,078?

A. That item is taken from an exhibit by Mr. Weber. I don't find here the official exhibit number. It is stated to be gas stoves (appliances) and this figure is given.

Q. You say you took it from Mr. Weber?

A. Mr. Weber's exhibit, yes.

Q. You did not take it from Mr. Teele's exhibit to which you refer at the top of this Exhibit AA-450, in which you purport to show that "this statement of Consolidated working capital is based on Mr. Teele's exhibit, without admitting or conceding the accuracy

of propriety of any of the items and charges," and your very first item, "Appliances in stock," is not taken from Mr. Teele's exhibit at all, is it?

A. I think that it is not, but I cannot say positively whether he gives it also. I examined his exhibits for all these things, and I don't remember whether it is also there or not.

Q. Didn't you find from the record, printed record, page 8750, that this item of appliances in stock at that time was $630,429.61?

A. I don't remember that.

Q. Where did you get the next item, the item of 40838
$117,495.77?

A. One place where I found that was on Weber's same exhibit, on the third page, but I may have found it also in Teele's; I don't remember at the moment.

Q. Can't you tell whether you did or did not?

A. No, the exact figure is given there in Weber's.

The Master: When you entitled this exhibit as being based on the Teele exhibit, why aren't you able to refer to the Teele exhibit?

The Witness: It has been some little time, and I don't remember.

The Master: Why should you be referring to the Weber exhibit when you say it was based on 40839
Mr. Teele's exhibit?

Mr. Ransom: I move to strike out this statement that it is based on Mr. Teele's exhibit. I think it is entirely improper, and is a commentary on the methods of the witness.

A. The figures from there down were from Teele.

The Master: But the exhibit was not based on Teele's exhibit?

Mr. Chambers: He says he doesn't know.

Mr. Ransom: Why didn't he say it was based on Professor Weber's exhibit?

Mr. Chambers: He has not said it was not also in Teele's exhibit. He didn't have time to look it up and see.

The Master: In this exhibit, which he says is based on Teele, Mr. Bemis could have had a reference to the Teele exhibit just as he had a reference to the Weber exhibit.

Q. For either of these two items can you give any reference to Mr. Teele's exhibit containing any such figures as you have given?

Mr. O'Brien: I would like to ask counsel if
40841 he controverts these items?

Mr. Ransom: Certainly.

Mr. O'Brien: The reliability of these items?

Mr. Ransom: I have already referred to the fact that there is a difference of $36,000.

Q. Can you find any reference to the Teele exhibit for either of those first two figures?

A. Not on the particular exhibit of Teele's which I have before me. There are other exhibits of Teele which I used, and I don't think I have them here.

Q. You say based on Teele's exhibit. That is one exhibit. What exhibit did you refer to?

A. There was a larger exhibit as well as this one
40842 of 1918.

Q. What one do you mean?

A. I left it at the office. I don't remember now. Most of these figures I think you will find that follow come from Exhibit 364.

The Master: Is that the exhibit you had in mind when you made the statement on the top of this paper?

The Witness: Not that at least. The other figures I think are verified by Mr. Teele.

The Master: You used the singular there, didn't you?

The Witness: I probably should have said Teele and Weber.

The Master: Which Teele exhibit?

The Witness: The 1918 exhibit, which was 364. When I said Teele, I meant another exhibit relating to the same year, which was in fuller form.

The Master: How does that statement run on top there?

The Witness: "Based on Mr. Teele's exhibit, without admitting"—

The Master: Is it singular or plural? 40844

The Witness: It is singular.

Q. Can you give any reference to any of Mr. Teele's exhibits, the larger one, for these first two figures, yes or no?

A. I cannot now.

Q. Where did you get the third figure there, materials and supplies, $778,965.62?

The Master: Above there, what is Teele's figure on the second item?

Mr. Ransom: I haven't that before me for the moment.

The Witness: It has been several days since I got this up. Just before I came in this afternoon I picked this up to verify these figures. 40845

The Master: By "this" you mean what?

The Witness: Weber's exhibit, and that verified that third line too.

The Master: Let us find what Teele exhibit that is.

Mr. O'Brien: Have you any of the Teele exhibits here with you?

The Witness: Only 364. There was a larger one which went more into detail than this one.

Mr. Chambers: The other side has it, I think. Could you tell if you saw it?

Q. Is this the exhibit you mean?

A. Yes.

The Master: Well, let him have it.

Mr. Chambers: What is that, 205?

Mr. Ransom: Yes.

The Witness: I don't see that now. It may have come from Weber's exhibit.

The Master: In order to save time on cross-examination, there will be stricken from Exhibit No. AA-450, and the language will be omitted in the printing of the exhibit in this case, if the
40847 exhibit is allowed at all after final consideration, the following words:

"Based on Mr. Teele's exhibit, without admitting or conceding the accuracy and propriety of any of the items and charges." The words I have just dictated will be literally stricken from this exhibit as if they had never appeared there.

Mr. O'Brien: I note an exception to your Honor's ruling, your Honor's direction. The witness has not been confronted by Teele's exhibit yet. It has not been shown that that is contrary to those.

The Master: The record speaks for itself.

40848 Mr. O'Brien: There have been mountainous exhibits from Teele.

The Master: The record speaks for itself.

Mr. Chambers: I might just state that Teele handed some papers to us that were not like the others.

The Master: It is quite apparent what the witness did. Go ahead, Mr. Ransom.

Q. The next line, passing for the moment the total produced by these various items, you call, year's labor cost of production as per Teele's exhibit, 1918, $307,376.77. By that you refer to what Teele ex-

hibit, what did you take that from? Exhibit 364, which you are looking at now?

A. Yes, that is what I thought I was taking it from.

Q. Well, did you?

A. I find the same figures here that I give in the footnote. There are four figures. I find them on this exhibit.

The Master: Let me see the footnote.

Q. That is, you have a footnote No. 2 on this exhibit, viz, "Labor and Cartage, Handling Coal Gas Fuel, $72,366.81; Labor and Cartage Handling Water Gas Fuel, $10,338.28; Gas Making Labor, $140,504.66; Repair Labor, $78,167.02." Those make up the total of $307,376.77? 40850

A. Yes.

Q. Now, this item of $72,366.81, you have called "Labor and Cartage Handling Coal Gas Fuel"?

A. Yes.

Q. Where did you get the identification of that item with handling coal gas fuel?

A. Well, the exhibit says "Labor, Cartage, Etc., Handling."

Q. Handling what?

A. It refers to the fuel above, I suppose. 40851

Q. That is, you are referring on this exhibit to, cost of production and distribution of the Consolidated Gas Company, twelve months ending December 31, 1918, under cost of production in connection with generator coal and boiler fuel, the last item making up the total of water gas fuel, being labor, cartage, etc. handling, $72,366.81?

A. Yes.

Q. Now, where did you get the right—what led you to undertake to identify that on your exhibit as

handling coal gas fuel when Exhibit 364 shows plainly on its face that it is handling water gas fuel?

A. Yes, it should be water gas fuel.

Q. On your exhibit it should be?

A. I believe so.

Q. Well, the next item, $10,338.28, which you just said you also took from Exhibit 364, show me where on Exhibit 364 you find an item, labor and cartage, handling water gas fuel, $10,338.28?

A. It is headed here, labor, $10,338.28, under the term "Water Gas Fuel."

40853 Q. Immediately following cartage of spent material, is it not?

A. Under the general heading of "Water Gas Fuel."

The Master: Isn't it in the section of the exhibit referring entirely to spent material?

The Witness: It may be that it is intended to refer to that. I thought it referred to the water gas fuel. It may refer to fuel, but the figure is there as labor.

Q. Then you have no reason to believe that that does not relate entirely to labor?

A. It is stated here as labor, and I took it as such.

Q. Did you read the testimony in connection with

40854 these two items, as to what labor item related to?

A. I suppose I did at the time, months ago; I don't remember it now.

Q. Do you understand that that item for gas making labor, $140,504.66, which is the next item in your footnote, includes all the gas making labor shown on Exhibit 364?

A. All that is contained in these other three lines specified.

Q. That is, you intended to show on this Exhibit XX-459, as working capital, the entire labor costs of the Consolidated Gas Company for gas making, all kinds of gas making labor, did you not?

A. That was not included in distribution, general repairs and renewals.

Q. No, simply gas making labor.

A. Yes.

Q. Do you think that that figure of $146,504.66 does include all the gas making labor shown on Exhibit 304?

A. It was all I identified as such from the lines here.

Q. Which line did you take that figure from, or which lines?

A. I took it from the line, gas making labor, 40856
$146,504.66.

Q. This item of $146,504.66 was gas making labor only in connection with water gas production, was it not, as it appears from the statement?

A. I do not recognize that there is any description to that effect. I do not say that is so, but of course I cannot deny it. That is all this seems to show, all gas making labor seems to be intended here.

Q. In relation to water gas.

Mr. O'Brien: Where is the title, "Water Gas"?

The Master: Up to that point, that is, down to this item referred to here, it is water gas, material, labor, and the spent material labor, and 40857
residuals, all refer to water gas down to that point.

The Witness: Yes, I think so now. There was very little coal gas made.

Q. Now, I call your attention to the line, "Quantity of Coal Gas made in 1918, 33,000 M cubic feet, at a cost of $89,913.78," and ask you whether you analyzed the cost of the coal gas to find the extent of the labor, gas making labor, included in the cost of that coal gas?

40858 Edward W. Bemis, Cross.

A. No; it would be a few thousand dollars, not much.

The Master: But you didn't analyze it?

The Witness: No, sir.

Mr. Ransom: I move to strike out that last statement.

The Master: It will be stricken out as not responsive.

Mr. O'Brien: Here with this catechising that is going on you would think the whole exhibit was entitled "Water Gas" from the questions of
40859 counsel for complainant.

The Master: Go ahead.

Mr. O'Brien: I call the Court's attention to the fact that there is no group of figures entitled "Water Gas," as has been indicated by the last fifteen or twenty questions of counsel for the complainant.

The Master: The Master states on the record that it is quite clear that all items down to the $146,000 item refer to water gas production.

Mr. O'Brien: Well, these two antediluvian structures that we claim are not used and useful only turned out an inconsiderable, unappreciable
40860 amount of gas, very inadequate.

Mr. Ransom: They saved your tenants this winter just the same.

Mr. O'Brien: They didn't save anything, you used them to boost your maximum daily output, that is what you used it for, to put on the pressure.

Q. In this item of $307,376.77, in connection with which item I called your attention to the item appearing on Exhibit 364, miscellaneous works expense, $105,222.12, will you say that that item is not made up in substantial part of labor cost?

Mr. O'Brien: Well, we have been over that, we took up half an hour of our time here on Washington's Birthday to show that he ought to have added about $12,000 to the working capital. We will give that to you.

The Master: Objection overruled, if it is an objection.

A. I did not specially analyze that item.

Q. You cannot tell how much labor cost is included in that?

Mr. O'Brien: I object to that as vague and confusing. 40862

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. No, I cannot.

Q. Now, take the item of gas storage at works, and distributing holders, $181,033.62, did you analyze that account as it appears in such form on Exhibit 364, to ascertain how much of that was made up of labor cost as shown in the various exhibits in the case?

A. No, but I considered my $200,000 up above, the $130,000 covered any items omitted in here.

Q. What item do you say covers it?

A. This $200,000 for other requirements includes 40863
the costs from associated companies, the $130,000 of that was intended to cover items that I could not analyze from this, the annual expense. This is only for 1 3-4 twelfths of these items.

Q. When you undertake to say that this item of $307,376.77 is year's labor cost, you have left out these various items of labor cost which I have referred to?

Mr. O'Brien: I object to that as assuming something contrary to the facts. Counsel has called attention to some labor items that would not to-

40864 Edward W. Bemis, Cross.

tal more than $20,000, and the witness's answer is that it is all included in the $200,000 down below, an all too generous offer to the company for that item. The assumption of counsel in putting that question is in error, it is not based upon anything in the testimony.

The Master: Objection overruled.

Mr. O'Brien: Exception. We will spend all of Washington's Birthday to add fifteen or twenty thousand dollars to this company's working capital. We will give it to them, concede it to them,

40865 and then they will be thrown out of court.

(Question read.)

A. Yes, save as they are covered in my allowance of $200,000.

The Master: Strike out that answer. In the item of $307,376.77 you have omitted the items that Judge Ransom has called your attention to?

The Witness: Not directly, but indirectly, because I have made—

The Master: Strike out the answer.

Mr. O'Brien: I except to the direction.

The Master: In the figure of $307,376.77, to

40866 which your attention has been called, you have omitted items to which your attention has been called by Judge Ransom. Is that or is not that so?

A. That is so, directly.

The Master: Go on.

Q. Professor Bemis, in this same exhibit, Exhibit AA-450, as to Consolidated Gas Company working capital, you state that the amount of $652,746.10 is the average of the three preceding items for one and one-third months?

A. One and three-quarter months.

Q. Your exhibit is wrong in this respect also?

A. My exhibit says one and three-quarters.

Q. Well, the copy that you gave to the defendants has "Average for one and one-third months." Do you say it should be one and three-quarters?

A. I thought it was one and three-quarters on all the copies that went out.

Q. Well, on the blueprint copies what is it?

A. It is one and one-third, but the same dollars are there, the one and three-quarters are carried out. That one and one-third is wrong.

Q. In your next item you purport to allow $200,000 4086?
for gas from associated companies, and other requirements. You are aware, are you not, that the Consolidated Gas Company purchases all of the gas of the Astoria Company except a very inconsiderable amount sold to a few local consumers in the vicinity of the plant?

A. Yes.

Q. What is that $200,000 composed of? Can you give me the details of it?

A. Yes, it is taken, like most of this table, from the first three lines down, from the figures on Exhibit 364 of Mr. Teele.

Q. What figures on Exhibit 364 make up this 4086?
$200,000?

A. The gas received from the New York Mutual is—

Q. How much?

A. There are two lines, one for gas and one for plant facilities, making a total of $689,300.11. Then there is gas from the New Amsterdam Company, $186,836.14.

Q. What else?

A. That was all, because the gas came from—it was noted in the case of the Standard, while the As-

toria was included in the working capital, so I took associated companies as meaning companies other than the Astoria; and the total for twelve months is $876,130.25, or per month, about $73,000 average.

The Master: So you made in round figures a couple of months about $200,000?

The Witness: No, that is not the idea.

Mr. O'Brien: There are other items included.

The Witness: The way I did it was this: I started off that they needed somewhat under $100,000 for that item. The other $100,000 was

40871 for other requirements, as stated here, it was any things I could not decipher in the other items of labor, and does cover them. The way I reached this $100,000 on the Mutual and the New Amsterdam—

Q. By this expression—

Mr. O'Brien: Will you keep that Dr. Munyon finger down? I object to this continually interrupting the witness—

The Master: Mr. O'Brien, take your seat.

Mr. O'Brien: I want the witness to finish his answer that Mr. Ransom interrupted.

The Master: Make your objection from your

40872 seat.

Q. By this expression, for gas from associated companies, did you mean by that the item of $200,000 to provide cash for the purchase, or for anything, except the purchase of gas from the New York Mutual and the New Amsterdam?

A. Yes, something else besides that.

Q. But so far as the purchase of gas from associated companies is concerned—

A. So far as relates to associated companies, that was all, but this did not include the other requirements. The $200,000 included that also.

Q. Now, you did not include anything at all for the purchase of the Astoria gas?

A. No, that was put in Astoria.

Q. There is no provision for this purchase of gas from the Astoria at a total cost—

Mr. O'Brien: I object to that. This is the sixth time he has asked that question. Now he wants to read some figures into the record. It is a waste of time on George Washington's Birthday.

The Master: Objection overruled.

Mr. O'Brien: Exception. 40874

Q. (Continued.) At a cost, as shown by Exhibit 364, of $6,100,023.27.

Mr. O'Brien: I object. This is some more of that Ransomese habit of trying a lot of stuff into a question and have it put in the record. The witness has stated three or four times that he did not include it, that he did not include in this amount of $200,000 any allowance or any item to cover the expense of gas from Astoria. That was amply taken care of in the working capital allowed to Astoria. We have got to submit to the third or fourth question so that Ransom can get that big figure into the record. 40875

The Master: It is in there, he doesn't have to repeat it.

The Witness: What is the question?

The Master: You did not allow anything in the $200,000 to provide cash to pay for that gas?

The Witness: No.

Q. Now, you speak of labor items which you were not able to identify, and intimated that you included in this $200,000 labor items which you were not able to identify. Didn't you find all of these labor items of the kind which you omitted from year's labor cost

40876 Edward W. Bemis, Cross.

of production, didn't you find that all items are set out in detail in Teele's Exhibit No. 205?

Mr. O'Brien: I object to that, because the question assumes something that is not in conformity with the record.

The Master: Objection overruled.

Mr. O'Brien: He did not omit it. What was not taken in in the matter of coal gas labor is included in this $200,000, this all too generous allowance to the company for an item of working capital.

40877 The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. Can you find any class of labor in connection with gas production which is not fully itemized on Teele's Exhibit 205?

Mr. O'Brien: I object further that the witness is switched from Teele's Exhibit 364 to some other section of the mountainous contribution in the shape of statistical data from the witness Teele.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. They may be all here, it appears as if they were
40878 here. I was specially studying Exhibit 364, and recognized that there might be some matters that I had overlooked, and I put in the extra $100,000, and that will more than cover it.

The Master: Did you know about Exhibit 205?

The Witness: I had it in my hands weeks ago, but did not have it when I was preparing this.

The Master: You had it before your exhibit was offered in evidence?

The Witness: It has been in my possession for some time, a long time.

Q. Now, for the New Amsterdam and the Mutual Companies, in making your computation of working capital for the Consolidated, you found that there was a total to make provision for of approximately $876,000?

A. Yes.

Mr. O'Brien: He has not mentioned that that was made up of the $186,000, and the $600,000 and odd.

The Witness: $689,000 is given on Teele's exhibit.

Mr. Ransom: I object to the interruption of counsel. 40880

The Master: Objection sustained.

Mr. O'Brien: This is off the record.

The Master: Well, the interruption is out of order.

Q. Now, to provide for the payment of $876,000, you figured that how much working capital was necessary?

A. About $100,000.

Q. A year?

A. $100,000 in constant use, because 1 3 4 months I reckoned in this case—it would not be quite that, but it is somewhere near that. One month would be 40881 $73,000.

Q. You said that you made corresponding provision for that as to the gas sold by the Astoria Company to the Astoria Company in the Astoria working capital. What amount did you include in the Astoria working capital to provide for the purchase of this 6,000,000 plus of gas sold by the Astoria to the Consolidated?

Mr. O'Brien: Just a minute. I don't think the witness said anything about corresponding amounts. That word has been incorporated into the record, and I object to the question.

The Master: Objection overruled.

Mr. O'Brien: He said he did not include the item in the $200,000 for gas purchased from the Astoria Light, Heat & Power Company, because it was taken care of in the working capital of the Astoria.

The Master: Mr. O'Brien, I am sitting here listening intently to what the witness says, and it is not necessary to tell me what he says.

Mr. O'Brien: You have been with this exhibit here for about seven months, and you know his
40883 habits, and this practice of incorporating in questions something that is not in the record. It is a persistent habit with him.

The Master: Answer the question.

Mr. O'Brien: Exception.

The Master: What working capital did you allow the Astoria to take care of this $600,000 worth of gas they are selling to the Consolidated?

The Witness: About a million dollars. I would raise that by $10,000 or $15,000, brought out on cross-examination.

Q. What is that?

A. Some miscellaneous expense that had not been
40884 taken into account, perhaps. I am assuming that it had not been included. It would add $10,000 or $15,000 to that amount. The exact amount I had, to answer the question, was $990,505.37, as shown on my Exhibit AA-449.

Q. You would not make any provision in the Astoria working capital except for these various items of labor expense, and materials and supplies expense, and the like, which you have shown on your Exhibit AA-449?

Mr. O'Brien: I am going to object to that, your Honor. It goes off into confusion. He

uses that rural term, that Chautauqua County expression, "and the like" which doesn't look well going up to the Supreme Court.

The Master: They will have enough to look at in 15,000 printed pages, without fussing about this.

A. I would not.

Q. Now, on this Exhibit AA-450, you deduct from what you call total gross working capital, one-half of the rentals for gas appliances payable in advance, $481,755.61?

A. Yes. 40886

Q. Did you inquire and ascertain when gas appliance rentals are payable?

A. I was informed usually in April, in advance.

Q. That is, bills for gas appliances rendered are rendered as of April 1st in each year.

A. I so understood. There were on the average, I believed, one-half of the rentals on deposit. One-half of that might be called accrued, and not yet earned by the company.

Q. You mean that on the average you would make provision for six months of the gas appliance rental?

A. Yes.

Q. What you have done, is it not, instead of making 40887
provision for half of the gas appliance rentals as working capital is to deduct one-half of the rentals for gas appliances?

A. That is payable in advance, and therefore is deductible, because it is cash they have in hand used as working capital.

Q. But where have you made any provision for the other half that it not paid?

A. I have assumed on the average one-half of the total is in the hands of the company, the whole rental for the year being about $963,000; that they had the

40888

enjoyment on the average of an advance payment of one-half of that amount before the services were performed, before the appliances were used. Therefore, it is properly deductible from the working capital.

The Master: In your opinion?

The Witness: In my opinion.

Q. Did you find out upon the information of appliances when a bill was first rendered, and what period is covered by the first bill?

A. I made inquiries as to all of that.

Q. Didn't you read the testimony in this case on
40889 that subject, as to the period covered by the bills?

A. I did.

Q. What period did you find it covered by the first bill rendered upon the installation of a rented appliance?

A. Some were for six months and some for a year, I understood.

Q. Where did you understand that from, who and what?

A. I made inquiries of accountants who had been on the books.

Q. Who gave you any such information?

A. I do not recall which one now of the account-
40890 ants.

Q. Can you identify any person who gave you any such information?

A. Not at the moment.

Q. You said you read the testimony. Can you find any place in the testimony where there is any such statement?

A. I don't remember the testimony, but I inquired among the accountants—it was payable in advance.

Q. You omitted altogether, Professor Bemis, the item of taxes of $1,216,828.06, you made no provision at all in that respect?

A. Yes; I did that intentionally.

Q. I assumed so. Now, the next item of your deductions from what you call total gross working capital is, refunds to the consumers, which you say is approximately $430,000. I assume by that you mean the balance which you say remains under the refund provision of the order of this court in the prior 80 cent case?

A. Yes.

Q. Where did you find, from what source did you take this item of $645,316.40 which you say should be deducted for accounts payable for appliances, coal, 40892
oil, and labor?

A. From an investigation made for me in the sundry creditors' ledger of the Consolidated Gas Company for December 31, 1918.

Q. Who made such investigation?

A. Mr. Stern.

Q. Who is Mr. Stern?

A. One of Mr. Sangster's accountants.

Q. Where is he?

A. In the City. I have his report.

Q. You did not take that from any exhibit?

A. I have his items here.

Q. You did not take it from any exhibit? 40893

A. No.

Q. Either of Mr. Sangster or Mr. Teele, or even Dr. Weber?

A. No.

Q. Did you examine the report of the company to the Public Service Commission for 1918 and ascertain what the figure was as shown in that report?

A. I do not recall now whether I did that or not. I sent this man down to get the exact data from the ledger, and relied on that.

Mr. Ransom: I move to strike out that figure. It is purely hearsay and incompetent.

The Master: Well, so is some other stuff. I will let it stand for the time being.

Mr. Ransom: Exception.

Q. Now, as to Exhibit AA-464—

Mr. Ransom: I think I shall move to strike out both Exhibit AA-449 and Exhibit AA-450.

The Master: No, I will not entertain the motions to strike out whole exhibits.

Mr. Ransom: Exception.

Q. On page 5 of this Exhibit AA-464, you undertake to state that for taxes, depreciation and contin-
40805 gencies the amount should not exceed two per cent?

A. Yes.

Q. On the very first page of this Exhibit AA-464, the amount of taxes shown there is $123,022.59, is it not?

A. Yes.

Q. The total amount of the investment is likewise shown as $5,178,614.58, is it not?

A. Yes.

Q. On that basis is not the amount of taxes alone in excess of two per cent on the investment?

A. In that particular case, but not on all of them, I think put together. I do not accept those taxes as
40806 necessarily correct, either.

Mr. Ransom: Well, I wish we could pay taxes here the way you have to in Chicago. I think that is all.

The Master: Have you anything else, Mr. O'Brien?

RE-DIRECT EXAMINATION BY MR. O'BRIEN:

Q. Doctor, you referred to a statement made by the Consolidated Gas Company in the annual report of said company to the Public Service Commission, which you were about to quote, from the printed annual report for the year 1915. I now hand you the

original of the report and ask you to point to the page where that inscription is, and to read it.

Mr. Ransom: I object to it as incompetent, irrelevant and immaterial and not re-direct examination.

The Master: That is all right, I will let Mr. O'Brien spread on the record any part of that exhibit he desires.

Mr. Ransom: Exception.

A. The memorandum appears facing page 36 of the return of the Consolidated Gas Company for December 31, 1915, and is as follows: 40898

"Memorandum in Respect to Renewal and Contingency Account: The practice which this company has followed in respect of charges to the account G 842, general amortization, was described in our letter of March 2, 1909, and accompanying affidavits. In view however, of the provision of Section 72 of the Public Service Commission Law, which recognizes the necessity of making reservations out of income for surplus and contingencies this practice has been modified by resolutions adopted by the Executive Committee and approved by the Board of Trustees, in the manner following:

" 'Resolved that the title of the account heretofore designated as renewal and contingency be from and after December 31, 1914, designated as contingency; and that for each month thereafter there shall be credited thereto and charged to operating expense an amount equal to five cents per thousand cubic feet of gas sold during said months, for the purpose of providing for contingencies and casualties such as those caused by fire, flood, earthquake, insurrections or riot, or any other hazard. No charges against the said contingency account, nor any appropriations therefrom to be made except by authority of the board of trustees or of this committee. 40899

40900 Edward W. Bemis, Re-direct.

"Resolved that in providing hereafter for the expenditures required from time to time for renewals and replacements of property of this company retired from service due to normal causes, obsolescence, inadequacy, or changes made in conformity with discoveries or improvements in methods of generating and distributing gas, the officers of this company be and they hereby are authorized and directed to charge each month after January 1, 1915, as a part of the operating expense of this company, under the designation of renewals and replacements, a sum equal to three
40901 cents per thousand cubic feet of gas sold during said month, the same to be credited to renewals and replacements accounts. No charge against the latter account, nor any appropriations therefrom to be made except by authority of the Board of Trustees or of this committee.'"

Q. In your judgment, a fund of approximately $3,000,000 accumulated out of earnings for renewals and replacements, contingencies, and casualties such as those caused by fire, flood, earthquake, insurrection or riot, or any other hazard—should such a fund be included in the rate base?

Mr. Ransom: I object to that.

40902 The Master: Objection sustained. I have already ruled that question out.

Mr. O'Brien: Exception.

The Witness: I would like to explain my large reduction in the rental of the Astoria Tunnel, from six per cent to two per cent, outside of the six per cent return on the investment. I was asked about taxes, but I want to explain about renewals and repairs.

Mr. Ransom: I object to his volunteer statement.

The Master: No, I won't take it.

Q. What is your judgment, Doctor, after analyzing the expenses, the moneys that are paid out by the Astoria Company in the shape of rentals upon the tunnels which its moneys built?

Mr. Ransom: I object to that.

Q. What is your judgment as to the amount charged up for renewals and replacements?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Is that in your opinion a fair amount to be charged up for renewals and replacements considering 40904
the fact that the Astoria Light, Heat & Power Company's money built them, and was loaned to the East River Company at a rate of six per cent?

Mr. Ransom: I object to that as incompetent, not re-direct and contrary to the facts.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Mr. O'Brien: That is all.

Mr. Ransom: I have deferred some other motions that I have with respect to Dr. Bemis's testimony, in view of your Honor's ruling that motions should be deferred. For example, I have not cross-examined on two or three matters that Dr. 40905
Bemis testified about, for the reason that I prefer to stand simply on my motion to strike out. But, I have reserved it in deference to your Honor's ruling that motions should be reserved.

The Master: Of course you are taking your chances as to what I do with your motions.

Mr. Ransom: Yes, I am taking my chances.

Mr. Chambers: I want to direct attention to the fact that Mr. Mylott and Mr. Maltbie have spent most of the day here.

40906

The Master: No, Dr. Maltbie has not been here here most of the day. He got here at 12:30.

Mr. Chambers: Around twelve o'clock.

The Master: He got here at 12:30.

Mr. Chambers: I would like to ask that they be excused this afternoon.

The Master: No, I am not going to let this case break down again. The witnesses will all stay here.

Mr. Chambers: I want it noted on the record that Mr. Maltbie has been here since at least half past twelve, and Mr. Mylott is here.

40907 The Master: Where is he? I haven't seen him at all.

Mr. Chambers: He is here.

The Master: Where? I haven't seen him.

Mr. Chambers: He is out in the guest room.

The Master: It doesn't make any difference, all the witnesses will stay here.

Mr. Chambers: I want to state that Mr. Mylott is working now on a matter, and you are keeping him here.

The Master: I don't care about it. There is nothing more important than this case just now.

Mr. Ransom: I have not called for Mr. Mylott's

40908 productions. I don't know anything to cross-examine Mr. Mylott on. I suggested on the record several days ago that so far as anything Mr. Mylott had put in there was no cross-examination, and Mr. Chambers asked me if cross-examination was waived and I said, "There isn't any cross-examination."

Mr. Chambers: Mr. Mylott is here in accordance with the Master's directions to me to get all the witnesses here. You are keeping him from that work.

40909

The Master: And they will stay here now. Mr. O'Brien, have you anything?

Mr. Chambers: Exception. We can finish and have them here in court, too.

Mr. O'Brien: Your Honor, some months ago, when Mr. Addicks was on the stand in reference to the minutes of the Executive Committee, he was directed to get together excerpts from resolutions of the Executive Committee as recorded in the minutes which covered the making of contracts other than coal and oil, it being assumed that as to coal and oil they were given in the excerpts already delivered. We got some papers to-
40910
day. The man is not here to go on the stand to swear to them. I want him produced here tomorrow morning.

The Master: That is very sad. Get Mr. Edgerton back, and let us finish with him.

Mr. O'Brien: These papers do not show the men present at each meeting, as did the original excerpts.

The Master: Will Mr. Addicks be here this afternoon?

Mr. Ransom: I don't think so.

The Master: Have him here the first thing in the morning.

40911

Mr. O'Brien: They have purposely held this back for months so we will forget it, but I haven't forgotten it. I am going to ask him a few questions about it under oath.

Mr. Ransom: Mr. Addicks has been working until two or three or four o'clock in the morning on this thing Sundays and Saturdays, in the most laborious way to get this information accurate and complete, and it won't amount to anything when they have got it.

40912

The Master: Have Mr. Addicks here in the morning. If Mr. Mylott is to testify to any figures, Mr. Chambers, you better see that the books are here and not have him say that he got certain figures from the books; because I will not take it under the circumstances.

Mr. Chambers: I am going to suggest, on the record, that the Master will ask you—of course, he won't really have to, but he should—he ought to give me an opportunity to consult with Mr. Mylott for a few minutes before I put him on the stand.

40913 The Master: While Mr. Edgerton is being cross-examined you can confer with Mr. Mylott.

Mr. Chambers: But I cannot. He is not done, and there is no use conferring with him until he is through.

Mr. Ransom: You mean he is not through?

Mr. Chambers: Who?

Mr. Ransom: Mr. Mylott?

Mr. Chambers: He has not finished the work I want to call him on, and I have not had an opportunity to go over it with him. I want a few minutes with him. Of course if I cannot have it I cannot, but as things are——

40914 The Master: I will not sit this evening; you can confer with him then.

Mr. Chambers: No, I have work all planned until about midnight tonight.

The Master: Tomorrow morning we will examine Mr. Howard, who is not your witness, and Dr. Weber, who is not your witness, and you will have plenty of time to confer with him then.

Mr. Ransom: We may examine then this afternoon.

The Master: Won't you take the rest of the day with Mr. Edgerton?

40915

Mr. Ransom: I doubt it. We will only be a few minutes with Mr. Howard, anyway. Will the Public Service Commission have Mr. Birdsley here in the morning?

The Master: Are you ready to finish with him?

Mr. Ransom: Yes.

Mr. Clark: Some time in the morning; I do not know what time.

Mr. O'Brien: Was not Mr. Birdsley's cross-examination finished?

The Master: No.

40916

Mr. Ransom: I have a few more questions, as I indicated at the close of his examination.

The Master: They were still checking up some test sheets and said they wanted to finish that. I do not want to bring him back again, though.

Mr. Ransom: You need not; tomorrow we will finish with him. If he has to come back again it will be as my witness in rebuttal.

HENRY H. EDGERTON, resumed.

DIRECT-EXAMINATION CONTINUED BY MR. O'BRIEN: 40917

Q. Mr. Edgerton, you gave us this morning your total figure, for mains of the complaint company, as of the date of your former testimony in the prior suit. Have you prepared an analysis of amounts deductible for asphalt over mains?

A. Yes, sir.

Q. And the factors for that deduction you found where?

A. I found in the testimony of Mr.— I took the testimony of Mr. Simpson on that, as to the percentage of mains under asphalt pavement, 90 per cent.

Q. What amount have you deducted from your total of asphalt pavement over mains?

Mr. Ransom: Objected to as incompetent. The witness is building a basis that is not warranted, and he is not permitted to characterize the testimony of other witnesses and build his testimony in this form thereon. The witness has no qualifications with respect to mains in the City of New York. If your Honor has any feeling that he has, I would like to cross-examine him on that just about five minutes.

The Master: No, I will not take any cross-examination.

Mr. Ransom: Exception. Here is a man who has never laid mains or pipes, or employed labor, or done anything, within the City of New York.

Mr. O'Brien: That is not correct.

Mr. Chambers: He said he had.

Mr. O'Brien: That is contrary to the testimony in the case.

Mr. Ransom: Mr. Edgerton won't say that, though.

By the Master:

Q. How much did you deduct, Mr. Edgerton, for asphalt pavement over mains?

A. The net amount after deduction?

Q. Yes, the net amount after deduction is what I want.

A. It is $6,030,128.33.

Q. The difference is what you deducted for asphalt?

A. Yes.

Mr. Ransom: That is over my objection and exception.

By Mr. O'Brien:

Q. That is pavement over mains?

A. Pavement over mains.

40921

Q. And after deducting this amount what did you substitute for it?

Mr. Ransom: Objected to as incompetent.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I substituted the ordinary pavement at 30 cents a square yard.

Q. What was the total of that?

A. $46,385,661.23.

Mr. Ransom: This is all over my objection and exception.

40922

The Master: Yes. That is the mains including the substituted pavement, you are talking about?

The Witness: Substituted the pavement, without depreciation. That is new.

Q. You have not as yet figured your depreciation?

A. No, sir.

Q. You have prepared the basis under which the computations were made, as to the item deducted for asphalt pavement over mains?

A. Yes, sir.

Q. And if cross-examined you will go into the details of the basis those refer to?

A. Yes.

40923

Mr. O'Brien: That is all, your Honor.

The Master: All right, cross-examine.

By the Master:

Q. Let me ask you, Mr. Edgerton, in the values that you fixed for plants, did you fix it according to the production of the various plants, so much per thousand cubic feet of water gas and so much per thousand cubic feet of coal?

A. In regard to mains?

Q. No, plants.

A. Only in regard to the pipes laid underground, what we call connections around the works.

40924 Henry H. Edgerton, Direct.

Q. The table, Exhibit AA-467, that I allowed in evidence began with page 4042 and ran to page 4740 of the record of the prior case. When I looked at it I found that you said that a coal gas plant would cost about between $250 and $270 per thousand daily capacity, and that a water gas plant would cost about $1.25 to $1.30 per thousand daily capacity.

A. One-two-five.

Q. $125 to $130 per thousand daily capacity?

A. Yes.

Q. What I want to know is, in figuring the value
40925 of your plants you did it on that basis?

A. Oh, no, not at all. The only thing I figured on that basis, in that valuation, were the pipes and the works and the yards, which I could not get at. I figured the size and the value of the pipes that would carry the amount of maximum make of a day, the maximum amount of gas.

Q. I read you now from this record, Mr. Edgerton, in the prior suit, from page 3747, the stenographer apparently repeating a question that had been asked: "The stenographer (reading): Are you able from your knowledge and experience in the construction of gas plants to state what would be a fair and reason-
40926 able cost in the Borough of Manhattan of a coal gas plant per thousand cubic feet daily capacity?" And you answered: "The Witness: I think a coal gas plant would cost about between $250 and $270 per thousand daily capacity." Do you remember that?

A. Very well, yes.

Q. That referred to the plant, did it not?

A. That referred to the plant.

Q. Do you also remember: "Q. What is it that makes the range of $250 to $270?

"A. Well, it would be according to the style in which it was built. If it was built in the plainest and still

substantial manner it might be reduced to $250; and if it was somewhat elaborated and made of such construction as we frequently see put in gas plants where they want to, as you may say, put on some style, it may be as high as $270." Do you remember that?

A. Yes, sir.

Q. "Q. What would you estimate the cost of a 22 candle power water gas plant per thousand daily capacity? I mean by that a water gas plant capable of producing gas of 22 candle power?

"Mr. Mathewson: Situated in the Borough of Manhattan? 40928

"Mr. Page: Yes.

"A. I think that ought to be accomplished within the limit of $125 to $130 per thousand daily capacity, maximum."

That referred to the water gas plant, did it not, Mr. Edgerton?

Mr. O'Brien: Of course, your Honor, I am objecting to this?

The Master: Are you?

Mr. O'Brien: I am.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. Do you recall those questions and answers, Mr. Edgerton? 40929

Mr. O'Brien: You have got my views on that. You asked another witness the same questions. It is not part of his testimony.

Q. Do you recall those questions and answers, Mr. Edgerton?

A. Yes, sir.

Q. That referred to the gas plant as a plant, did it not?

A. Yes, sir.

Q. What I am trying to get at is whether in the

40930 Henry H. Edgerton, Direct.

figures you gave that appear on page 4042, values of plants, you valued them on that basis?

A. Oh, no, not at all.

Q. Would you say that those units that you figured in 1906 or 1907 remained the same during the years since?

Mr. O'Brien: Just a minute, your Honor. I am going to object to that as I did when you undertook to roam around at large with the witness Little. It is not part of this witness's direct examination, it is speculative, and it was testimony
40931 that was taken over the objection of Senator Page.

The Master: Senator Page asked these questions.

Mr. O'Brien: No, he did not.

The Master: I beg your pardon.

Mr. O'Brien: "Mr. Page: All this line is taken subject to the same objection and ruling and exception, I presume, is it not?"

The Master: Where are you reading from?

Mr. O'Brien: Page 3747.

The Master: Why, he is just repeating and confirming what Mr. Mathewson said. Mr.
40932 Mathewson said, "Same objection to this.

"Mr. Page: All this line is taken subject to the same objection."

Mr. O'Brien: Well, it does not make much difference with me whether I thought he had objected to it. I object.

The Master: I am going to get this whether you object to it or not.

Mr. O'Brien: I object to it as an entirely improper method of conducting an examination of this kind ,and it is entirely speculative.

Q. Mr. Edgerton, I understood you to say that the values you gave in 1907 of the various plants appearing on Exhibit AA-467—I mean these values here (indicating book)—

A. 1906, by the way.

Q. 1906, but it is dated as 1907—were not based on the figure I just gave to you?

A. No, those figures are balanced plants. The plant has got to be balanced, understand.

Q. Yes, I understand that. What I want to get at is, using the same basis that those figures were given on in 1907, would you say they had gotten any higher, 40934
say by 1918?

Mr. O'Brien: Same objection, your Honor.

The Master: Overruled.

Mr. O'Brien: It is entirely speculative and it was not brought out on direct.

A. Do you refer to depreciation?

Q. I am referring to these same questions that Senator Page asked you, when you said it would cost to build a coal gas plant from $250 to $270 per thousand and a water gas plant from $125 to $130 per thousand—whether you would say those figures remained the same up to 1918, or whether you have to increase them? 40935

Mr. O'Brien: Just a minute. He was not put forward as to the value of the plant in 1918. The method of arguing with the witness and catechising him is entirely improper, not within the province of the Master, and I am going to protest, as I protested many times before, to the Master taking the place of counsel for complainant and indulging in this kind of an examination.

The Master: Mr. O'Brien, you have repeated that objection a dozen times.

Mr. O'Brien: I am going to repeat it every ti
that you take the witness and do the same thi

The Master: I mean that you have repeated
a dozen times as to this witness. You are full
protected by the objection and exception that
given you.

Mr. Chambers: I am going to make objectio
and take exception on the ground that it is no
proper cross-examination and was not brough
out by the direct.

The Master: I want to know what Mr. Edger
40937 ton gives as his opinion as to whether it has re
mained the same up to 1918 from 1907.

Mr. O'Brien: I insist it is not at all—

The Master: You have it all on the record,
do not keep interrupting.

Mr. O'Brien: I hope some day to change the
Master's mind as to the propriety of these things,
before we get to the end of this case. It may be
a hopeless hope, but it is still dormant here.

Q. Mr. Edgerton, Mr. O'Brien having quieted
down, would you be good enough to give me your
judgment about that one item? Would you give the
same figures for 1918 as you did in 1907, or would
40938 they be higher?

A. They would be higher, of course.

Q. How much higher?

Mr. Chambers: I object again.

A. I have not calculated the exact increase in prices
in gas construction in 1918.

Q. Well, I do not want it in detail. Would you say
considerably higher?

Mr. O'Brien: I object to that as entirely im-
proper.

Mr. Chambers: 1918 is abnormal, we contend.

40939

The Master: You admit that it would be considerably higher?

Mr. Chambers: What is that?

The Master: Would you admit it would be considerably higher?

Mr. Chambers: I do not think you ought to ask Mr. Edgerton that question.

The Master: I am going to ask that question and you may as well make up your mind to it.

Mr. O'Brien: I object to the question: he says he has not figured it up. Why go any further with the probe?

Mr. Chambers: Why ask him to guess on so important a matter? 40940

Mr. O'Brien: That was done here before and it created trouble. We want to know for the purposes of the rest of the record whether it is re-cross-examination or direct. Mr. Ransom might assume it is my direct-examination that you bring out, he may assume it is cross. How are we going to treat it?

The Master: We will see when we get to it.

Mr. O'Brien: He has not been brought forward on this matter, and it is entirely speculative anyway. That did not relate to the Consolidated Gas Company plant, those units that were brought in in the questions that were asked back in the case in 1906. Mr. Edgerton, how old are you? 40941

The Master: Mr. Edgerton, do not answer that question, and do not answer any other question now until I tell you to.

Mr. O'Brien: Is there a question awaiting answer?

The Master: There is.

Mr. O'Brien: I will have the question read so I can object to it.

The Master: You won't have it read at all.

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Mr. O'Brien: I ask that it be read for the sake of the witness.

The Master: Who are you asking, that it be read?

Mr. O'Brien: I am asking the stenographer to read the question to the witness.

The Master: You will address your request and inquiry to the Master and not the stenographer.

Mr. Chambers: I take it, then, you overrule all objections to your question?

The Master: I do.

40943 Mr. Chambers: Exception.

Mr. O'Brien: Then I ask the Master to direct the stenographer to read the question for the witness.

The Master: That will be done.

(The stenographer read the question as follows):

"Q. Well, I do not want it in detail. Would you say considerably higher?"

The Master: I have overruled all objections to that question.

Mr. O'Brien: Exception, of course.

The Master: Mr. Edgerton need not answer it

40944 if he feels that he is not qualified. If he feels qualified enough to answer that it would be considerably higher he can say so; if not I would rather he did not answer it.

A. Well, there are some items I know have gone up, but there are others that have not gone up in the ratio of other materials. Gas construction is a little dull now, and I suppose that on the whole if the parties were at all anxious to build them they would perhaps—they would not get a figure like that, of course.

The Master: That is all I want. Now, Judge Ransom, you can go ahead and cross-examine.

Mr. O'Brien: Before I close the direct-examination, your Honor, I want to ask the witness his age.

The Master: I won't allow it. He has already given it to us. He gave it to us when he was here before—told us when he was born, told us how old he was when he went to Europe.

Mr. O'Brien: I do not recall that.

The Master: I will recall it for you. He said he was eighteen years old when he went to Europe.

The Witness: In 1860 I was eighteen. I was 40946
born the first of January, 1842.

Mr. Chambers: I did not get when he was born, there

The Master: It is not important; you can figure it back at recess.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Edgerton, have you built any gas plants since 1884?

A. Since 1884? Why, certainly. Since 1884.

Q. Yes.

A. I have built all the construction for gas that the General Electric Company and the North American Company had at hand.

Q. Did that include any gas plant? 40947

Mr. O'Brien: Just a minute now. The same old objection, your Honor, to coming in—he came in when the witness wanted to finish that answer, and I am going to see that he gets permission to finish it.

Mr. Ransom: I understood that he had finished it.

Mr. O'Brien: He had not finished it.

The Master: First of all, Mr. O'Brien, take your seat. Secondly, Mr. Edgerton will answer questions directly and not make speeches.

40948

Mr. O'Brien: Will you let the witness answer? I have been craving that all day. Will you direct that he be allowed to answer?

The Master: I will not permit the witness to give a rambling answer to a question that calls for a yes or no answer.

Mr. O'Brien: A motion can be made to strike it out.

The Master: I won't take it that way.

Mr. O'Brien: Then you won't give the counsel for the complainant direction to refrain from interrupting until the witness get his answer fin-

40949 ished?

The Master: I will not.

Mr. O'Brien: Then I take exception to your ruling.

The Master: On the contrary I shall ask counsel to interrupt when the witness does not respond directly to the question.

Mr. O'Brien: Then I note an exception.

The Master: Or I shall interrupt him myself if he does not.

Mr. O'Brien: Exception to your ruling and attitude.

The Master: Mr. Edgerton, we will all save a

40950 lot of time if you will listen to the question and just answer yes or no if it is possible to do so.

Mr. O'Brien: But the witness has got a right to say something more than yes or no, and there is not any Master or Court in the land can deny him that right. If the answer is not to be yes or no, categorically, he has a right to say whether under certain conditions it is yes, and whether under certain conditions it is no.

The Master: When the question calls for a yes or no answer, the witness will give a yes or

40951

no answer or no answer will be taken. Next question.

The Witness: What is the last question asked? I have not had time to answer it.

(The stenographer then read as follows):

"Q. Mr. Edgerton, have you built any gas plants since 1884?

"A. Since 1884? Why, certainly. Since 1884?

"Q. Yes.

"A. I have built all the construction for gas that the General Electric Company and the North American Company had at hand.

40952

"Q. Did that include any gas plants?"

The Master: I will strike out everything after the word "Yes" in that last answer of the witness.

Q. In your testimony in the prior suit in 1906 and 1907, do you remember being asked on page 2909, of the record in that suit, as printed in the United States Supreme Court, in the direct-examination by Mr. Kirby:

"Q. Have you ever designed or built any gas works?

"A. Yes, sir.

"Q. Where have you built such works and about when?"

40953

Then followed a list of various places down to 1883 and 1884. Then this question:

"Q. Any more recently than 1884?

"A. Yes; in part. There was no construction of works by me entirely, I don't remember any, since 1884."

Do you remember being asked that question and giving that answer?

A. Well—

The Master: Do you remember it?

Q. Do you remember that question and answer?

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A. I remember a question about the plants I built and when they were built.

The Master: No, do you remember that question and answer?

The Witness: I answered—no, I don't remember the question in that shape. No, I don't.

The Master: That is an answer.

Q. Have you made any examination of plants in Europe since the time you were there as a young man during the civil war?

A. No, sir.

40955 Mr. O'Brien: Are you asking him something about that question?

The Master: You need not answer that inquiry, Judge Ransom. Next question.

Mr. O'Brien: I wanted to get it clear on the record, your Honor.

Q. Have you operated as officer or manager of any gas plant in this country since you operated the Fort Wayne plant in 1866 to 1871?

A. Yes.

Q. Have you been officer or manager of any plant since the Fort Wayne in 1866 to 1871?

A. Consulting engineer, that is all.

40956 Mr. Ransom: I move to strike out the answer.

The Master: No, I will let that stand. It simply saves another question. His answer in substance is, "I have not been an officer or"—what else did you say?

Mr. Ransom: Officer or manager.

The Master: "Officer or manager, except that I was consulting engineer."

The Witness: Well, I was chief engineer of the Gas Light Company of America, and in connection with the General Electric Company I may

say that I managed the plants, because I told them what to do.

Mr. Ransom: I move to strike out that answer, if that is his concept of management.

The Master: No, I will let it stand.

Q. At page 2910 of the record of the trial in the prior suit do you remember being asked this question, or these questions, and did you make these answers:

"Q. What works have you operated officially?

"A. I operated the Fort Wayne Works from 1866 to 1871.

"Q. What position did you occupy in those works? 40958

"A. Secretary, superintendent and treasurer; I did everything there was about it."

A. That should be '73, though.

"Q. And thereafter did you directly operate any other works?

"A. Not as an official. I assisted in operation by my advice in quite a number of works."

The Master: Now, the question, Mr. Edgerton, is, do you recall those questions and those answers?

The Witness: Yes.

The Master: Do you recall them?

The Witness: I don't recall them specifically, 40959 no, but I know, as far as that is concerned, I was—

Mr. Ransom: I move to strike out anything further.

The Master: I have got to interrupt you. The question is a very simple one; if you do not remember these questions put to you and the answers that Judge Ransom reads, as they are given to you say so; if you do remember them, say so. Do you or do you not remember those questions and answers?

The Witness: I don't remember them specifically, no.

The Master: That is an answer, "I don't remember them specifically."

Mr. Ransom: Does counsel question the correctness of this record?

Mr. O'Brien: I question the fairness of the examination.

Mr. Ransom: Do you question the accuracy of this transcript?

Mr. O'Brien: Those questions you have taken
40961 some isolated questions out without the rest of the page. It does not get anywhere; it is not fair.

Mr. Ransom: I ask whether I have got to prove this record by bringing up the certified copy from downtown?

Mr. O'Brien: You are reading two questions from—

The Master: It is quite apparent that you will have to. Do not waste time with things you know you won't get any where with. If Mr. O'Brien wanted to concede this to be a correct record, he would have said so long ago.

40962 Q. Have you been manager of any plant, any gas plant, since you testified in 1906, yes or no?

A. Specially named as manager or what?

The Master: I don't care what you have been called: have you managed a gas plant?

The Witness: Oh, managed lots of them.

Q. Since 1906?

A. No, since——I have advised with regard to managing.

The Master: The answer is stricken out. Have you managed a gas plant since 1906?

Mr. O'Brien: I submit, your Honor, that that question should be, considering the record that is

already made by the questions taken out of the old record—it ought to be made definite.

The Master: The Master rules that the question is quite definite.

Mr. O'Brien: That is, there are many kinds of managers.

By the Master:

Q. Any kind of manager. Have you managed a plant since 1906?

A. Well, I will say yes if I am allowed to explain.

Q. Is your answer, then, yes? 40964

A. Yes.

By Mr. Ransom:

Q. What plant have you managed since 1906, what gas manufacturing plant?

A. I have been interrogated and questioned—

The Master: No, that is stricken out and I am interrupting you. You said you managed a gas plant, didn't you?

The Witness: I say I managed a gas plant; they took my advice running it the way I—

The Master: Wait a minute. Did you say you managed a gas plant?

The Witness: Well, when I am asked whether I managed it, I said— 40965

The Master: That is not what I asked. You said you managed a gas plant?

The Witness: I have managed a gas plant.

The Master: Give me the name of the plant.

The Witness: The plants were the General Electric Company at Schenectady and a plant at Asheville, North Carolina.

Q. Was this all after 1906?

A. Yes, that was after 1906; after I built them there were questions of management came up. The

questions of management: letters, I got trunks full of letters with regard to the management of plants.

The Master: Were you in Asheville managing that plant, or running it, operating it?

The Witness: I started it; I ran it—

Q. After 1906?

Mr. Chambers: Let him say.

A. And as I came up North I sent advice down about the management of the plants.

The Master: No, I am going to get this straight on the record.

40967 Mr. O'Brien: Your Honor, if you will bear with me a minute and let me make a statement here. You have got to throw out Bradley's salary out of this case unless you consider that he is the Emeritus Chief Engineer of this company, giving such advice as a man of his years may be able to give.

Mr. Ransom: He is on the job day after day.

Mr. O'Brien: He is, but he has not been produced in this case as a witness.

The Master: The question asked Mr. Edgerton has nothing whatever to do with whether Mr. Bradley is managing the plant or is entitled to his

40968 salary.

Mr. Chambers: Mr. Edgerton said he ran that plant.

The Master: The question is whether Mr. Edgerton managed a plant since 1906, in the sense of being in the plant running it, operating it, managing it, directing it.

The Witness: In my hands?

The Master: In your hands.

The Witness: No, I managed it by advice.

Q. What was the last year you were in Asheville?

A. 1906—1905 and 1906, I spent that time; part of 1906 and all of 1905 and 1904.

Q. In Asheville?

A. Yes, most all of it. I was traveling some.

Q. How late in 1906?

A. Well, I shall not say that I was down there since 1906, or in 1906 either, because it was by correspondence.

Q. You won't say that you were in Asheville at all in 1906?

A. No.

Mr. O'Brien: He said that.

The Master: Or since?

Q. Or since? 40970

A. No. 1905, I think.

By the Master:

Q. As to the General Electric gas works, when was that?

A. The General Electric, that was Asheville.

Q. That is the Asheville works?

A. That is Asheville, the General Electric. So is Butte, Montana, for the North American Company.

By Mr. Ransom:

Q. When was the last time you were in Montana?

A. 1902.

Q. When were you in Schenectady in connection with gas works last? 40971

A. 1905.

Q. Have you named all of the gas plants, or any gas plants, which you say you had a managerial relation to from 1906 on?

A. No, I advised several plants since to stop using—

Q. No, have you had any official relationship to any gas company since 1906?

A. If you ask me a question—

Mr. O'Brien: You switched your question there.

The Master: Well, that was justified because

Mr. Edgerton was not answering the other question. What is the question?

(The stenographer read as follows):

"Q. Have you named all of the gas plants or any gas plants which you say you had a managerial relation to from 1906 on?"

A. Why, yes, Pittsburg. I was in almost daily communication with the vice president of the General Electric Company and kept telling him about progress.

Mr. Ransom: I move to strike out the answer.

4097.5 The Master: Yes, strike it out. Mr. Ransom wants to know outside of advice that you gave by correspondence or otherwise, whether you had charge of any gas works from 1906 on?

Mr. O'Brien: Why doesn't he make his question plain and differentiate between being in the plant and having his hand on a lever?

The Master: Have I made it plain?

Mr. O'Brien: I cannot say that you have, your Honor.

The Master: Do you understand my question, Mr. Edgerton?

The Witness: I will say that I have advised

4097.4 The Master: Can't you answer what I am asking you? Outside of the advice that you have given, in the manner that you have described, have you had the actual management and operation of a gas plant since 1906?

Mr. Chambers: I submit that "advice" might be management.

The Master: I am excluding advice. Outside of advice that he has given, and in the manner he has described, I ask if he managed a gas plant since 1906.

Mr. O'Brien: He was not able to fully describe it; that is the difficulty with that question.

The Master: Do you understand my question, Mr. Edgerton?

The Witness: Well, in the sense of being an officer with the gas works, anything more than being a consultant, I have not.

The Master: I think you have had enough of that.

By Mr. Ransom:

Q. Have you ever constructed gas mains in New York City? 40976

A. During the time of the—

Q. Well, yes or no?

A. Yes. I laid them all——pretty much all of them in Coney Island, and as regards the Mutual Works I was in constant communication with Mr. Kennedy when he adopted the use of oil or naptha.

Q. Have you laid gas mains in New York City?

Mr. O'Brien: He has given you the answer.

The Master: On Manhattan Island.

Mr. Chambers: That is different.

Mr. O'Brien: You are getting the Ransom sharp twang, now, your Honor.

The Master: I get tired of this Coney Island business. We are talking about Manhattan Island. Did you ever lay any mains on Manhattan Island? 40977

The Witness: With my own hands?

The Master: No. Did you ever direct a force of men laying them?

The Witness: Do you mean to act as foreman?

The Master: Superintendent, manager, engineer, anything—out on the field seeing them laid?

The Witness: I told them just what to do.

The Master: Where did you tell them what to do, and when?

40978

The Witness: I told them what to do, for instance, as to the depth of mains.

Q. Was that prior or subsequent to 1884?

A. That was when the Mutual was organized and started.

Q. Before 1884?

A. That is 1872.

Q. Have you ever hired labor or bought pipe for mains in Manhattan or New York City?

A. I bought pipe here, yes.

Q. For the laying of mains here?

40979 A. Not for laying the mains here, for laying elsewhere. That is, the offices were here.

Q. Just answer the question and do not wander off.

The Master: Mr. Edgerton, you will save yourself a lot of time if you will just answer questions. Just forget that you have any interest in this case and just answer the questions as if it did not make any difference to you what happened to it.

The Witness: I have not any interest in the case.

Q. On page 2987 of the record in the former case do 40980 you remember being asked these questions and making these answers:

"Q. Have you ever laid any pipe in the City of New York?

"A. No, sir.

"Q. Have you ever employed any labor in laying pipe in this city?

"A. No, sir."

Were you asked those questions and did you make those answers?

Mr. O'Brien: Just a minute. What page did you say that was on?

Mr. Ransom: 2987. Do you remember being asked those questions?

Mr. O'Brien: Wait a minute, I do not see that yet.

Mr. Ransom: It is not necessary that Mr. O'Brien see it.

The Master: Let Mr. O'Brien have a chance to see it.

Mr. O'Brien: No, nothing is necessary for the consumers, but they are in the case.

The Master: Mr. Edgerton, answer the question. 40982

Mr. Ransom: Do you remember being asked those questions and making those answers?

A. I do not remember it, but I know I did lay mains.

The Master: I will strike that out, everything except "I do not remember it."

Mr. Chambers: No, I object.

The Master: I know you object. Your objection is overruled. I am not going to take irresponsive matter.

Mr. Ransom: Exception.

The Master: The question was, do you remember those questions and answers? I will take nothing that is not responsive to that question and counsel may as well understand it now as any other time. 40983

Mr. Chambers: Exception.

Q. Have you ever constructed any buildings in the City of New York?

A. Why, I have advised in regard to them.

Q. Have you ever constructed any buildings in the City of New York?

A. Not as to laying the brick or anything, except advice.

40984 Henry H. Edgerton, Cross.

Q. Have you ever done any excavating work or had any control of any excavating work or foundation building in the City of New York?

A. Do you call Coney Island the City? Is that in the City?

Q. Yes.

A. Well, I built a works there.

Mr. Chambers: It is now in the City.

Mr. O'Brien: Well, the Master said he did not care anything about Coney Island anyway.

Q. Have you ever constructed a gas plant in the
40985 City of New York?

A. Yes, I constructed the Coney Island plant.

Q. Anything besides that?

A. No, sir.

The Master: When was the Coney Island plant built?

The Witness: '78.

Q. Have you ever employed labor in the City of New York for construction purposes?

A. No, not—no, sir.

Q. Or for manufacturing purposes?

A. No, sir.

Q. Do you remember being asked on page 3795
40986 of the record in the former suit:

"Q. Have you ever constructed any buildings in the City of New York?

"A. No, sir.

"Q. Have you ever done any excavating work or had any control of any excavating work or foundation building in the City of New York?

"A. No, sir.

"Q. Have you ever constructed a gas plant in the City of New York?

"A. I advised in regard to the construction in the early days.

"Q. Yes, the Mutual, you have testified to that?

"A. Yes.

"Q. But have you ever constructed a gas plant in the City of New York except so far as you advised as to the Mutual in the 70's?

"A. No, sir."

Do you remember being asked those questions and making those answers?

A. Yes, I overlooked the Coney Island plant.

Q. In other respects the answers are correct?

A. Yes.

Q. Did you ever construct a system of gas mains 40988
in the City of New York?

A. I have advised in regard to them.

Q. Did you ever construct a system of gas mains in the City of New York, yes or no?

A. I advised Mr. Kennedy in regard to gas mains, about the gas being not susceptible to cold, like coal gas.

Q. That advice to Mr. Kennedy was prior to 1884?

A. Yes, that was in 1873—1872, '73, '74 and '75, when Mr. Kennedy and I were together in the Gas Light Company of America.

Q. Mr. Kennedy and the matter you speak of was 40989
as to the Mutual Gas Light Company long before consolidation?

A. Yes, in Boston and in Lowell, Massachusetts.

Q. No, I am speaking about New York City?

A. Oh, no, not in New York.

Q. Aside from such advice as you say you gave Mr. Kennedy of the Mutual, somewhere in the 70's, you have never constructed a main system in New York City?

A. No

Q. These figures that you gave in connection with cost to reproduce mains, upon what depth of mains were those figures based?

A. Based on not less than—the top of the main not less than 2 1/2 feet from the surface of the pavement as a general proposition, in order to keep over the water mains, to keep higher than the water mains.

Q. Your estimate is based on a depth of 2 feet from the surface of the pavement to the top of the pipe?

A. Yes, sir.

40991 Q. Only 2 feet?

A. 2 feet 6, I said.

Q. You are sure about the 2 feet 6?

A. Yes, sir, that is 2 feet 6.

Q. It is not based on the actual depth of pipes?

A. As I measured. I measured many actual depths.

Q. And is it based on the actual depth of the main system of the complainant company?

A. I saw hundreds of pipes—

Q. No, answer the question: Is it based on the actual depth or an assumed depth which you say now is 2 feet 6?

A. Yes, it is based on an actual depth as far as I

40992 could see the pipes.

Q. Do you know the depth of the present pipes?

A. Yes, I have seen them.

Q. Did you know it in 1906?

A. Yes, I have seen hundreds of cases.

Q. Did you know the average depth of the pipe in 1906?

A. Not the average all over the City.

Q. I mean as to the Consolidated, were you able to get the average depth?

A. As far as I saw, yes. There was a good deal of excavation going on and I made memoranda, saw it going on and looked at it critically.

Q. Was this two feet six the average depth of the pipes of the company?

A. To the top of the main, that would be about it, because below that you begin to get down into the water system.

Q. Did you take the average depth of the pipes?

A. No, I took it as I saw it.

Q. As you saw it, that is what you took?

A. Yes, sir, as I saw it.

Q. And you are sure about the two feet six?

A. I am sure about the two feet six, because I measured it as it is shown there, and I had people 40994
investigating it besides myself. I had it investigated.

Q. That is two feet from the surface of the pavement to the top of the pipes?

The Master: No, two feet six, he said.

Mr. Ransom: Yes, two feet six.

A. Yes.

Mr. O'Brien: That is the third time for that, your Honor.

Q. I ask you whether at page 2988 of the record in the former suit you remember being asked these questions and making these answers:

"Q. Now, your estimate of the cost of the mains in New York City is not based upon the reproduction 40995
of the main system as it now exists here today with the same depth at which the present pipes are laid, is it?

"A. I don't know the average depth of the present pipe; I have seen numerous cases where they were much shallower than this estimate of mine, that is gas pipes; I don't know whether they were the Consolidated Gas pipes.

"Q. But your pipes were laid under this estimate at an average depth of two feet, you say?

"A. Two feet from the surface of the pavement to the top of the pipe, yes, sir

"Q. So that if the pipes of the Consolidated Gas Company average more than two feet deep your figures would not represent the entire cost of reproduction of those pipes, even if your other figures were correct, would they?

"A. They would have to be corrected to the average depth so far as trenching is concerned, yes, sir."

Do you remember being asked those questions and making those answers?

A. No, sir, I do not. I never remember any two feet about it.

Appeal. Q. Will you say you were not asked those questions and that you did not make those answers?

A. I will say that if there was asked a question it was replied two feet six. Two feet six inches is the shallowest main that I proposed in New York.

Q. Will you say that you did not make those answers to the questions which I have read?

Mr. O'Brien: He has given his answer, your Honor.

The Master: I will allow it once more.

A. Yes, sir, that is a mistake. At the top of the main.

Q. You said you had here some detail on this Appeal. figure you gave today? May I see it?

Mr. O'Brien: It is not in evidence, your Honor.

The Master: No, but this is an illustration of the rule that I announced a long while ago, that when Judge Ransom calls for that you can offer it in evidence because he has looked at it.

Mr. O'Brien: Who has looked at it?

The Master: He makes it competent for you to put in evidence when he does that. This illustrates the rule that I have been trying to explain to you for some months.

A. There it shows 2 feet 6 right along, 2 feet decimal 5, and perhaps they did not understand decimals (handing counsel paper).

Q. Is this some tabulation that you have made up now or a copy of some tabulation which you say you had at the time of the prior suit?

A. Yes

Q. At the time of your testimony in the prior suit?

A. Yes, it is a tabulation of the testimony I gave in 1886.

Q. Did you have this tabulation in this form at that time? 41000

A. It was copied in here, yes. I undoubtedly did.

Q. Is this something you have just made up today or yesterday?

A. I copied it from the record.

Q. What page of the record?

A. 2072.

Q. You copied all of this table from page 2072 of the record in the prior suit?

A. Yes, I think I copied that from that page—no, there is another tabulation there, but I copied that with regard to depth.

Q. What you have put down here at the bottom "Width, depth and cubic yard contents of trenches" 41001 you say you copied?

A. Yes

Q. From page 2072 now?

A. Yes, sir.

Q. Where did you copy the rest of it from?

A. 2869, the weights—the weights of pipe, page 2869.

Q. Where did you copy the upper part from?

A. The total amount?

Q. Well, those other figures there.

A. Page 2084 is the grand total. It amounts to $8,919,000.

Q. What page is it—2084?

The Master: Yes.

A. 2084.

Q. Where did you get the next figure for asphalt pavement over mains?

A. I got that by deducting the estimates for the asphalt over mains.

Q. Where do you find that in your testimony?

A. Of course the asphalt or equivalent pavement

41003 was—

Q. What page?

A. Page 2083—$2,883,664.

Q. Is this figure, given on page 2083 the figure which you say you deducted?

A. Yes, that is the figure I deduct for the asphalt pavement, but I did not put the figure down there. I put the total as deducted.

Q. In making up these tables that you call an appraisal of property you said yesterday that you figured the holders according to the weight and that you weighed the holders yourself?

A. Yes, sir.

41004 Q. Do you say now that you weighed the six holders at 14th Street?

A. Yes.

Q. You did weigh them?

A. I weighed the—I took the pressure by which the weight is calculated on those holders.

Q. Is that the same thing you did on the others?

A. Yes, I took the pressures all around, on all the holders.

Q. That is, you did the same thing as to all the six holders at 14th Street that you did elsewhere?

A. Well, there was one holder that we had counterweighted. Of course, I did not do that, because a counterweighted holder cannot be gauged that way, you have to figure out the weight of the counterweight.

Q. Will you say that you did not make your estimate on those holders entirely on their capacity?

A. No, I made it by weight.

Q. You are sure of that?

A. Yes.

Q. As to the two other holders at 14th Street, did you figure those on capacity or weight? 41006

A. I figured them on weight where they would raise them up. I remember now at 14th Street that the holder was not full up when I wanted to get the weight of it. It was not full weight and I asked him to put it up, and I don't remember whether they put that holder up to the full weight or not, but I took the pressure of the holder.

Q. As to the two holders at 65th Street, did you weigh them and make an estimate on that basis, or did you figure on cubic contents only?

A. Oh, I figured on the weight of the holder in every case. I do not figure by contents.

Q. You are sure of that? 41007

A. Yes, and the holder must be up and certain deductions I spoke of before have to be made in order to get that weight.

Q. Did you make any actual measurements in the plant at the time you made up this so-called appraisal?

A. Yes, lots of them, hundreds of them. In the Mayer Schedule the thickness of iron was left out. The length and width was given, but we had to have the thickness, so I measured the thickness wherever he neglected to state it.

41008 Henry H. Edgerton, Cross.

Q. So far as you tested Mr. Mayer's measurements, didn't you find them correct?

A. I did with the exception that there were a few I differed with; but it was not anything of any significance. I always went with a tapeline and measure and calipers and micrometer measure to measure the thicknesses of the iron and some of the other dimensions.

Q. Did you make any actual measurements in any of the plants except such as were made with the eye or by pacing?

41009 A. I did not pace anything.

Q. Did you make any measurements in any other way, any actual measurements, except by pacing or with the eye?

The Master: I think Mr. Edgerton has said he did it with the tape.

Mr. O'Brien: He has answered it.

A. I had a tape, a small steel tape and a big steel tape, a long one, and wherever by my eye I thought there was anything out I would measure it myself. I say that generally I found very few differences from Mr. Mayer's measurements.

Q. Take the cost of the generator houses at 21st

41010 Street, did you make the calculations for them?

A. They were made right under my eye.

Q. Did you make them?

A. Yes, I went over every one of them.

Q. Did you make them?

A. Why, I had help, estimators who did part of the clerical work, but I had a foreman, as Mr. Woodward and myself went over all those, and a great many of them I went over with a slide rule to see if they had carried them out exactly, looked over them to see if they carried out my methods. I say in one or two they slipped in—putting in the price of brick, they put in the price of common brick where

it should have been pressed brick. That was a little building that you put in the alterations of at 132nd Street.

Q. Do you remember being asked in connection with the labor items on this and other buildings:

"Q. Does this total up the $65,500 to which you have testified?

"A. $65,500, including $10,000 for foundations."

And then this question:

"Q. What do you allow for carpenters per day, do you remember without referring to any sheet? I would like to have your recollection?

41012

"A. No, I have not. It is put down here as—

"Q. No, not what it is put down at, but do you know what carpenters are paid in the City of New York of your own knowledge?

"A. No, not of my own knowledge, they vary."

Do you remember being asked those questions and making those answers?

A. I put in a schedule of prices—

Q. No, do you remember being asked those questions and making those answers?

A. No, I don't. I had—

The Master: That is enough, Mr. Edgerton, you do not remember.

41013

Q. Then these questions:

"Q. Now, I will ask you what rate you reckoned on?

"A. Sixty cents an hour.

"Q. How many hours a day?

"A. I don't know as it makes any difference if a man works—if his pay is based on the hour, whether he works eight hours or ten hours.

"Q. Perhaps it may. How many hours a day do you compute?

41014 Henry H. Edgerton, Cross.

"A. Well, the price set by the hour does not make, as I say, any difference. I suppose eight or ten hours a day.

"Q. What would you assume that meant per day for a carpenter?

"A. That would be $4.80 for eight hours."

Do you remember those questions and making those answers?

A. I remember dimly approximately those prices, but looking at what they actually make there I found there was a considerable difference. It was much
41015 lower in the table for carpenter work.

Q. Do you remember being asked those questions and making those answers?

Mr. O'Brien: I submit it has been answered, your Honor.

Mr. Ransom: He has answered everything in the world but that.

The Master: Do you remember it?

A. I do not remember it, no.

Mr. Ransom: I think I will have to wait and get the record on this.

The Master: It does not make any difference, anyhow. In rebuttal you simply read from your
41016 record on those matters that he says he does not remember. You have to go through this same performance whether you have the certified copy or not.

"Q. How much for slaters?"

Do you remember being asked these questions and making these answers:

"A. Slate roofing is calculated on the basis of 30 cents per square foot.

"Q. But how much per day for slaters?

"A. I have no memorandum.

"Q. How much for slaters' helpers per day?"

A. I put that memorandum in afterwards. I had a memorandum.

Q. No, do you remember being asked these questions and making these answers? Do you remember that?

A. No.

Q. "Q. You say you have never had any of this done in the City of New York?

"A. No.

"Q. Now, we are talking about New York. How much per foot did you allow for slate roof?

"A. Thirty cents. 41018

"Q. How much of that was labor and how much slate?

"A. The slate would be worth probably from 8 to 14 cents per square foot, according to the quality of it.

"Q. How much did you allow here out of the 30 cents for the slate?

"A. About ten cents.

"Q. And about twenty cents for labor?

"A. That would be the difference.

"Q. How much do you allow for plumbers per day?

"A. Well, as far as the plumbing is concerned, 41019
I do not see that it enters in there. There are no pipe fitters; it would be 45 cents an hour and helpers 30 cents.

"Q. And how much for painters?

"A. Well, as regards painters, a coat of paint is always provided to be put in there when you send the ironwork. This is a question of ironwork. I do not suppose there is any extra charge. I have not made any extra charge for ironwork which has been already painted.

"Q. Well, you found woodwork painted and various things painted. How much would you allow for a painter per day, or did you not allow anything for painting?

"A. I did not see any woodwork painted in there.

"Q. Then you allowed nothing for painting in the plants?

"A. I will not say plants. I say there, it is all ironwork and steelwork that has been painted.

"Q. I am not talking only about this building, but about all the buildings of the various plants. What
41021 did you allow for painting, what did you allow for a painter's wages per day? You certainly found painting in some of the plants?

"A. Well, a gas plant, no, as far as that is concerned, except perhaps an office building or something of that sort. There is very little painting to be done.

"Q. Don't you know, Mr. Edgerton, that as a matter of fact all the steelwork and ironwork is painted after it is put in position and frequently two coats of paint?

"A. Yes, well, that is put on by—if that is provided, it is put on by the contractor. The erection
41022 of a gas holder, unless it has special terms, or if it is put on by the company, it goes into their ordinary working expenses.

"Q. How much do you allow per day for a painter?

"A. I have not any allowance for a painter there.

"Q. How much for a mason per day?

"A. The same rate as the bricklayers, 70 cents an hour.

"Q. That would be how much per day, $5.60 for eight hours?

"A. Yes, 5.60.

"Q. And how much did you allow for an ordinary laborer, I mean a laborer in building construction work?

"A. Twenty cents an hour.

"Q. That would be $2.40 a day?

"A. Twelve hours, yes, if you get them that long.

"Q. That would be $1.60 a day for eight hours?

"A. Yes, and ten hours would be $2.00."

Do you remember those questions and did you make those answers?

A. I cannot remember all the questions that were asked me, but that is substantially, I suppose, what I 41024
said.

Q. Do you doubt that it is accurately what you said?

A. There is not anything sounds out of the way about it. I put in—

Q. Do you say that that is an accurate report of the answers you made?

The Master: I think Mr. Edgerton has answered it sufficiently.

A. You overlook the fact that I put in the schedule these matters under inquiry, and I could not carry everything in my head. There is a schedule for all classes of work there that was done in the 41025
works put in with my appraisal.

Q. Do you remember these questions:

"Q. How many bricks did you estimate one mason would lay on the average in a day?

"A. He would lay about one thousand bricks a day, I suppose, on the average. They can lay a great deal more, but then—

"Q. How many laborers did you assume would be required for, say, four masons?

"A. Now, as a matter of fact, we know how much that work cost complete per thousand when we know

the price of brick and price of labor and therefore at $20 or $21 per thousand, it includes laying and mason work and lime and sand.

"Q. You don't know that when you know the price of brick and the price of labor, unless you know how many laborers you have got to have and what their wages are, and I ask you, for instance, what proportion of helpers or laborers you require as compared with the number of masons to keep the masons employed?

"A. That is the mason contractor's business.

41027 "Q. To establish that $20 or $21 a thousand?

"A. Well, that is the price that I have found some of the very most efficient contractors in town offer to do that kind of work for."

Then there was a motion to strike out.

A. Yes, that was the $21 per thousand.

By the Master:

Q. Do you remember those questions and answers?

A. I do not remember the $21 per thousand, except on pressed brick work. I put $25, but I do not recall.

Q. You do not recall these questions?

A. No, sir.

41028 By Mr. Ransom:

Q. "Q. Now, I would like to have you, if you can, give me the details of the $21.00 per thousand for brick laid, showing how much is material and how much labor, and how that labor is divided between masons and masons' laborers.

"A. Well, that ordinary brick was $7.50 and the difference between that and $21.00 is labor and mortar and lime.

"Q. I know, but I would like to have you divide it up. Can you do it?

"A. No, I do not believe anybody else can except a contractor.

41029

"Q. Well, you cannot, that is the point? Do not testify for somebody else.

"A. No."

Do you remember those questions and making those answers?

A. I don't remember. I think $21 a thousand, there was not anything like that except pressed brick work that I estimated as high as that. I never paid such a figure for brick work, ordinary brick. I say if they have $21 a thousand there except for pressed brick it is 25 I put, and I know that I did not make any such statement as that.

41030

Q. Do you remember these questions:

"Q. How many masons would you consider there should be for each foreman required?

"A. Well, now, that is a matter that I did not go into at all, in connection with this construction. It is not necessary. It is simply superfluous, and is just talk.

"Q. Did you make any allowance for timekeeping on the job?

"A. I made an ample allowance for inspectors.

"Q. How much did you allow out of this $21 for timekeeping on the job?"

A. $21 he sings himself; I did not say $21.

41031

Q. Do you remember these questions:

"Q. What did you allow as the value of Portland cement?

"A. $1.75 a barrel. That is rather an excessive allowance unless they have to cart it to the place, but these works are built right along the dock front.

"Q. How much per thousand brick?

"A. I say, as to the cement and sand required, we have the mixture in building the various parts requiring cement, such as tanks, and it is included in the cost of brick work at so much per thousand

brick. I have not pretended to separate that off. Some use more and some less. It provides for grouting the brick work as it goes up, and for the sufficient use of cement for the different classes of work.

"Q. What mixture of cement and sand did you include in this $21.00? What proportion?

"A. Well, sometimes it is one to one and sometimes one to two.

"Q. Yes, but so far as you were concerned in reaching your $21.00 a thousand, what did you allow?

41033 "A. One of cement and two of sand is the ordinary proportion, unless a man—

"Q. Was that what you allowed in getting the $21.00?

"A. $21.00 a thousand, yes.

"Q. One of cement and two of sand?

"A. Yes. In some cases one of cement and one of sand, it depends upon where it is located in the tank."

Q. Do you remember those questions and did you make those answers?

A. I made all that except that $21. They are all according to my present recollection. I think that

41034 is Mr. Mathewson's figure. I do not remember the $21, as I say, except in the cost of pressed brick.

The Master: We will suspend here until 9:30 tomorrow morning.

Mr. Chambers: I am going to give the other side a list of the books, a list of the vouchers by number, and a list of the ledgers that we would like here when Mr. Mylott comes on. You will reach him by two o'clock, you say?

The Master: Who?

Mr. Chambers: Mr. Mylott.

The Master: 9:30 tomorrow morning.

41035

Mr. Chambers: Aren't you going to give me an opportunity to—

The Master: The witness has got to be here at 9:30 tomorrow morning.

Mr. Chambers: I protest.

The Master: If you have not got him here you assume the responsibility for not being able to go ahead with your case.

Mr. O'Brien: Will you note the hour of adjourning is 6:03?

The Master: The stenographer, at the instance of Mr. O'Brien, will note the adjournment at 6:03.

41036

Mr. Chambers: Note my exception to not allowing me an opportunity to go over this with Mr. Mylott. There are some of these we only got for a few questions, but technically, I suppose, we have to have them all here (hands Mr Ransom papers). Will you direct them to be here?

The Master: Yes. Have you got the year of the voucher numbers marked?

Mr. Ransom: Yes. This is apparently a call for somewhere between 25,000 and 100,000 vouchers—perhaps over 200,000.

The Master: How is that?

41037

Mr. Ransom: It says all the petty cash vouchers for each of those departments for eight months. I should suppose probably, roughly, that is a call for a quarter of a million vouchers.

The Master: The stenographer will spread this request upon the record and I will make no direction about it one way or the other.

Mr. Chambers: Exception.

The Master: It is a perfect joke.

Mr. Chambers: I think it is a serious matter. I take exception.

41038

Mr. O'Brien: I note an exception, too.

(The list of Mr. Chambers by direction of the Master is spread on the record as follows):

Milo R. Maltbie Date Feb. 23, '20

Subject: Vouchers, 1919.

18
505
814
1,077
4,763
6,125
41039 7,897
9,248
9,824
10,350
13,317
9,451
5,380
1,774
3,237
4,867
6,474
7,844
10,336
41040 11,244
13,061
14,681
479
2,512
6,558
8,726
825
2,730
2,733
3,143
4,127

41041

4,382
5,585
6,629
7,323
8,809
10,338
12,185
87
6,280
9,602

Milo R. Maltbie Date Feb. 23, '20.

Operating Ledger 1914 41042
Operating Ledger 1915
Operating Ledger 1916
Operating Ledger 1917
Operating Ledger "A" 1918
Operating Ledger B 1918
Operating Ledger A 1919
Operating Ledger B 1919
Operating Journal 1919
Sundry Debtors Blotters 1919
General Office Monthly Pay Rolls 1919
General Office Petty Cash Vouchers Jan.-Oct., 1919, Incl.
Branches 1-2-5-6 Petty Cash Vouchers, Jan-Oct., 1919, Incl. 41043
Utilization Petty Cash Vouchers, Jan-Oct.,1919, Incl.
Water Dept. Petty Cash Vouchers, Jan.-Oct., 1919, Incl.
Elec. Dept. Petty Cash Vouchers, Jan.-Oct., 1919, Incl.
Street Dept. Petty Cash Vouchers, Jan.-Oct., 1919, Incl.

Adjourned to Tuesday, February 24, 1920, at 9:30 A. M.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 41047

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, February 24, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 41048
MR. O'BRIEN, of Counsel for defendant Swann.

HENRY H. EDGERTON, resumed.

CROSS-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Mr. Edgerton, you were engaged during part of about three weeks in making your appraisal in 1906, were you not?

41049

A. No, longer than that. That is the time, about, I devoted to it exclusively, but I was gathering data in the meantime about various points that came up in the appraisal.

The Master: You mean his actual physical examination of the plant, do you not?

Q. Well, were you in the plants more than fifty hours, in your examination of the plants for the purposes of this appraisal?

A. I did not keep tally on that. I went there—

41050 Q. Were you more than fifty hours in the plants in your examination preliminary to—

A. I don't know.

Q. What?

A. I don't know. I said I did not keep an account of it.

Q. You did not keep any account of it at that time?

A. No, sir, I did not keep any account of it.

Q. You are quite sure about that?

A. I am sure about it. Your people checked ac-

41051 counts.

Q. I asked you whether you remember upon the prior trial, at page 3641 of the record in the Supreme Court, page 5117 of the record in the Circuit Court, being asked this question and making this answer:

"Q. How long have you been engaged in making your appraisal?

"A. About three weeks, in addition to the time taken before this last effort to get an appraisal."

Do you remember that?

A. No, I remember stating that—

Q. Do you remember stating that?

A. I remember three weeks.

41052 Q. What?

A. I remember three weeks as the actual time of appraising. I do not remember the trimmings that got in.

Q. Do you remember also being asked these questions, and making these answers, Supreme Court record, page 3796, Circuit Court record, page 5320:

"Q. Will you tell me when you went to the 14th Street plant, when you entered it and how long you spent there and when you left?

"A. I don't remember the exact date it was when I first got their permission to go in, and I went there,

I think, three days in succession and spent probably four hours a day.

"Q. That was the 14th Street plant?

"A. Yes.

"Q. That was the only plant that you had examined up to the time of the recess taken on the 10th of December, wasn't it?

"A. I think so.

"Q. Now, what was the next plant that you examined after, I mean the plant after the first one, was it 42nd Street?

"A. I think 42nd Street. 41054

"Q. Now, will you tell me what day you went to 42nd Street and what hour you went to the plant and when you left?

"A. I can't tell the exact date without referring to some suggestions or memorandum that I haven't at hand. Possibly I went there an hour of the day and spent some time in getting in touch with it. I think the superintendent was out and I had to wait until he came back.

"Q. You entered the plant on January 3d at about ten and remained until half-past ten, didn't you?

"A. Oh, that was just merely to measure some thickness of some purifier metal and various others— 41055
to examine the docks. I had been there three times previous to that.

"Q. Then you give me the date and the time you spent each time?

"A. I think I spent about three hours.

"Q. Can you give me the date?

"A. No, I don't remember the date. I visited so many plants that I can't tell the exact dates of each. I spent probably four hours on my first visit to the 42nd Street plant and possibly three or fours hours on the second visit and then on the 3rd I was there

a couple of hours, and in January I was there a short time just to check off things I had overlooked.

"Q. About half an hour?

"A. About half an hour. That was to measure the thickness of iron and see the condition of the deck again."

Do you remember being asked those questions and making those answers?

A. I remember part of it. I don't remember every question and answer.

Q. Does that sound substantially correct to you?

41057 A. Yes, that sounds like it is so.

Q. Then these questions:

"Q. Now, as to the 99th Street plant, you went there on Sunday, December 23rd, didn't you, in the morning?

"A. Yes. I went there. I don't remember the exact date. It was Sunday.

"Q. Sunday, December 23rd?

"A. Yes.

"Q. You went in the morning and remained till about half-past twelve, did you not?

"A. I don't remember the exact time. I went from there to the—

41058 "Q. Wasn't that about the time you were there?

"A. I wasn't there over two hours, I shouldn't suppose.

"Q. And then you went to the 132nd Street station, did you not, and you spent about two hours at the 132nd Street station on the same day?

"A. I didn't go to the 132nd Street station on that day.

"Q. When did you?

"A. I went to 132nd Street several times and I cannot remember the exact dates.

"Q. It was January 3d, I think, that you went to

132d Street, wasn't it, and remained from about twelve-thirty to two-thirty?

"A. I think about that time.

"Q. Now, on January 3d, you also went to the 111th Street station, did you not, about two-thirty and remained how long?

"A. Long enough to measure up the pressure on the gas holders, that was my object in visiting those stations.

"Q. Well, how long did that take, half an hour?

"A. I don't suppose it took over an hour to measure the gas holders for pressures where I was facili- 41060
tated at all.

"Q. Now, the 63d Street station you visited on January 1st, did you not?

"A. I don't remember the date I visited it. I took the pressure of the gas holders and looked around.

"Q. How long were you there?

"A. I don't think I was there over an hour. It was in the evening."

Do you remember those questions and those answers?

A. I don't remember all of them. I remember going around about as that describes.

Q. Does that sound substantially correct to you? 41061

A. Yes, that sounds—

"Q. The 65th Street station you also visited on January 2d, did you not, from about quarter of three till quarter past five?

"A. 65th Street I think I visited two, possibly three times. I was there taking account of the ironwork and taking some photographs of stations and holders and not having a gas fitter along to do some of the alterations required to take the pressures on the holders I had to visit it again. I made two visits to 65th Street."

The Master: Is that "alterations" or "calculations"?

Mr. Ransom: "Alterations."

The Master: Probably he meant "calculations."

Q. (Continued.) "Q. You visited it twice to take the pressure on the holders?

"A. Yes, sir. I also was there to take a look at it before.

"Q. Did you go inside before?

"A. No, I didn't go inside; I went with a view of
41063 seeing what the state of the gas holders was, whether they were in use.

"Q. How long were you inside the works altogether—two hours?

"A. Probably five hours altogether, on both occasions.

"Q. On all occasions?

"A. Taking it altogether, I was there long enough to see all that I wanted.

"Q. Now, as to 63rd Street, you visited the 63rd Street station on January 1st, did you not?

"A. I think possibly, although I don't think that was the date. I measured the pressure on the holders;
41064 I think that was subsequently.

"Q. How long were you inside the 63rd Street station?

"A. Probably an hour and a half.

"Q. All told?

"A. Yes."

Do you remember those questions being asked and making those answers?

A. I remember my trip around substantially that way.

Q. That is substantially correct?

A. Yes, I should say so.

"Q. Now, as to the 21st Street station, you went there, did you not, on December 23rd, about eleven o'clock, first?

"A. I don't remember the date. I think it was likely about that date.

"Q. And you remained until about two o'clock, did you not, on the day that you went?

"A. I think that was about two hours, or two and one half hours, going through that station.

"Q. Then you called again at 21st Street on the first day of January, didn't you?

"A. I called again and spent two or three hours 41066
there.

"Q. And all that covers your inspection of the 21st Street station?

"A. I think I was there once more.

"Q. Well, was it before or after?

"A. I think I made three visits there; I won't be sure about that, but I had to make several visits, you know, in order to get the gas holders.

"Q. In order to get the pressure?

"A. Yes.

"Q. How long were you there on the third occasion, if you did go a third time, an hour?

"A. I am not positive about it. I think the two 41067
occasions embraced about all the inspection I gave to 21st Street personally.

"Q. How long were you there on the second occasion? On the first you were there about two and one-half hours, you say?

"A. Yes.

"Q. And on the second occasion how long were you there in that station?

"A. I had two gentlemen with me the first occasion. I think we went to 21st Street, and one on the second occasion.

"Q. I know, but that is not the question. How long were you there on the second occasion?

"A. I think between two and three hours.

"Q. On the second occasion?

"A. Yes. Probably that."

Do you remember those questions and those answers?

A. I don't remember the questions and answers categorically, but I remember the circumstances about inspecting the plants.

Q. Those answers sound substantially correct to
41069 such questions?

A. Yes, they sound all right.

Mr. O'Brien: I do not think, your Honor, this is cross-examination. He is not asking the witness now—the witness has not testified in this case, in the instant case, that he made these visits and hence it is not the situation where he is being confronted with something that he said sometime ago, to controvert something he is saying today. You would not let me—

The Master: I know your argument. Now sit down and I will answer you. I know what I would not let you do. The question that Mr.
41070 Edgerton was asked was whether he spent more than 50 hours in this examination.

Mr. O'Brien: That was read from that record.

The Master: I don't care where it was read from. He was asked whether he spent more than 50 hours and he would not assent to it, and in order to meet his testimony he is being cross-examined in the manner now being very properly pursued.

Mr. O'Brien: Wasn't that 50 hours taken from the other record?

Mr. Ransom: No.

The Master: No, but Mr. Ransom probably got it from the prior record. He is cross-examining him in the proper method and quite in accordance with the rule I invoked against you.

Mr. O'Brien: I note an exception.

The Master: I am watching these things; I would not let him do anything that I would not let you do. I think I will cut his examination short very soon. I am going to let him finish this line, and so long as he was going through the plants I was waiting until he finished.

Q. I quote from page 3709 of the Supreme Court, page 5324 of the Circuit Court record: 41072

"Q. Now, respecting the 44th Street station, you went there first, did you not, on December 19th?

"A. The first station I visited after 42nd Street was 44th Street.

"Q. That was December 19th, wasn't it?

"A. I have forgotten the date. I did not put those down. I didn't have any idea there was any importance in what date I went there.

"Q. I do not care particularly as to the date. I am merely getting the time, whether it was December 19th or December 20th. You remained there for what period? You left about half-past one, didn't you, and 41073
when did you arrive?

"A. On the first occasion I went there to measure the holders and make some measurements around the place, and I don't think I got those—I visited it again, taking a few of other parties and measuring the holders. I spent quite a little time in 99th Street, six or eight hours altogether.

"Q. Did you go more than twice?

"A. I think possibly I did. I don't think I got all the measurements I wanted first.

"Q. Isn't it a fact you went December 19th and

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remained until half-past one o'clock P. M., going in the forenoon sometime about eleven o'clock?

"A. I wasn't there, not at the station, the first day.

"Q. And the second day, didn't you arrive about twenty minutes of twelve and leave about half-past one?

"A. I didn't take note of the time.

"Q. Well, about that, wasn't it?

"A. Possibly. I got through."

Do you remember being asked those questions about 44th Street?

41075 A. There were a great many questions about the time of getting there and the time of going away. I answered generally I didn't know. I knew I stayed there long enough to do what I wanted, that I gave the necessary time to it.

The Master: Are these questions and answers substantially correct according to your recollection?

The Witness: I suppose they kept tabs on it, yes.

Q. Well, is this what you testified or substantially what you testified?

Mr. O'Brien: I think the witness has given you

41076 an answer.

The Master: No, he has not.

Mr. O'Brien: He says that he made those rounds, and that he could not answer the questions categorically.

The Master: He has not, but I do not think it is particularly important.

A. I did not testify to that. Those are all Mr. Mathewson's questions from some tabs they kept at that time.

By the Master:

Q. Yes, but are those the questions and the answers you gave as you recall it now?

A. It is my recollection now as to the precise time.

Q. I say were those the answers that you gave thirteen years ago as nearly as you remember it?

A. Yes. I cannot remember it well.

By Mr. Ransom:

Q. "Q. Now, take the 18th Street plant. You visited that, didn't you, on December 20th, or about that?

"A. Somewhere along there.

"Q. And you arrived there, did you not, about half-past two in the afternoon?

"A. It was in the afternoon. I stayed there till 41078
two, I suppose. I suppose I spent three hours around the 18th Street station.

"Q. Did you go into the Inwood station, inside that station?

"A. No, sir.

"Q. 132nd Street station?

"A. Yes, sir.

"Q. How long did you spend there in that station?

"A. Possibly three hours."

Do you remember being asked those questions and making those answers?

A. Does it say there that I did not examine the Inwood station? 41079

Q. Did not go into the Inwood station and examine the station?

A. I did, too.

By the Master:

Q. You do not remember making these answers, then?

A. Then I don't remember making that, no. In Inwood, I used to stay there a little to see it.

Q. Outside the Inwood stations are the answers about right?

A. About right as regards time.

By Mr. Ransom:

"Q. Do you remember being asked these questions—

"Q. I think I asked you about that, and you said it was possibly from half past twelve to half-past two. Now, does this cover the time you spent in the various stations of the Consolidated Gas Company?

"A. Oh, no. I have been in those works from time to time ever since 1873, or 1872.

"Q. I refer to going there for the purposes of the testimony here?

"A. This is for this examination, to see what was
41081 there, yes, sir. That comprised the time which I used for looking over and comparing these inventories."

Do you remember being asked those questions and making those answers?

A. I don't remember it, but I think it sounds very likely. Answering in regard to time, I did not keep tabs on it.

Q. Do you remember being asked these questions at page 3800 of the Supreme Court record, page 5320 of the Circuit Court record:

"Q. Which plants of the Consolidated Company were you inside of within the last ten years, before the beginning of this suit?

41082 "A. I think I have been in most all of them.

"Q. Well, name them?

"A. I don't—that is not the holder stations, but the works.

"Q. Well, 14th Street?

"A. Yes, I have been in 14th Street.

"Q. 21st Street?

"A. I don't remember 21st Street—yes, within ten years I have been in the 21st Street station.

"Q. Within five years?

"A. I don't think I have within five years, no, sir."

Do you remember being asked those questions and making those answers?

A. Well, I remember the question about—

Q. Do you remember being asked those questions and making those answers?

A. No, I don't remember a word of those questions.

Q. Well, is that substantially correct, those answers?

A. No, I don't remember the words in which the questions were asked nor the words of my answers. I have not the slighest idea what I answered.

Mr. O'Brien: I submit, your Honor, that even 41084
if Judge Ransom is within the letter of the rule that governs an examination of this kind, there is no fairness in it. He will jump along two or three questions and then skip something that is substantially the other way, and it is a case of taking up your time and the Court's time to go back over all this testimony and read it so as to get the connected statement. To illustrate, here he goes along on page 3799 and reads a couple of questions that he thinks are of advantage to the complaint in this case, and then he will jump along and go on again.

The Master: The answer to it is, this is all 41085
proper in cross-examination, and that, in so far as the witness has said he doesn't remember or it is not correct, it means nothing in this record at all until he reads it from the record as the statement of the witness under oath from another record, and then when he does that you read in anything else that you want. That is all there is about it—and until he reads it in there is no harm done. It is all cross-examination.

Q. Do you remember being asked these questions immediately following what I just read, page 3800 of

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the Supreme Court record page 5326 of the Circuit Court record:

"Q. 42nd Street?

"A. Yes, I have been in 42nd Street within ten years.

"Q. Within five?

"A. No, sir; I don't think I have.

"Q. 44th Street?

"A. It may possibly be ten years ago; I know they were using the Tessa de Moto process at the time I was there last.

41087 "Q. 99th Street?

"A. I have not been in 99th Street since Balmore was there years ago—no, that was the Harlem. I have not been in there, no, sir, for years.

"Q. And the holder station you say you have not been in before the suit?

"A. No."

The Master: I think we have got enough of this line now.

Q. Do you remember being asked those questions and making those answers?

A. No, not definitely.

Q. Are those substantially correct?

41088 A. Substantially. I started in December and kept going around those stations and calculating until January, and consumed three weeks of time, with aides. I do not mention anything about the men who went with me and helped. I want to make a correction, Mr. Master, on one point, and that is in regard to the depths I gave. I recalculated and I find that is the depth of trenches.

By the Master:

Q. Two feet six?

A. Two feet six, yes.

Q. Then it is two feet from the top of the main?

A. No, not quite on a four inch main.

Q. Well, on a six inch main it would be?

A. Yes, sir, on a six inch main.

Q. I have got your point.

A. I found that out in recasting my calculations.

Q. Well, that is practically in line with the testimony you gave on the former trial, then?

A. I don't remember.

The Master: You evidently were asked about six inch mains, or thereabouts, and you were figuring two feet from the top of the mains to the surface of the pavement. It is not important; I 41090
think all of this 1906 testimony should be disregarded.

By Mr. Ransom:

Q. On the matter of holders you say you weighed all the holders?

A. Yes, sir.

Q. I ask you whether you remember being asked on page 3804 of the Supreme Court record, page 5333 of the Circuit Court record, these questions, and making these answers:

"Q. It is a question of what kind of holders they may be. Can you tell me what weight you allowed for the six holders in computing your value of 41091
$146,600?" That was the value you gave for the six holders at 14th Street, was it not?

A. Yes, and they say there are six holders, as I remember.

Q. "A. I could not get at the weight of those holders, but I based my estimate of the values of those holders entirely on what I had a bid for the construction of similar holders, only heavier.

"Q. That would require us to examine somebody else, and we are now examining you. What weight did you assume in your computation of $146,600?

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"A. I had a bid for a No. 12 iron—

"Q. No, no, no. That is not the question. I say what weights did you assume these six holders to be in material, entire construction, including the holder and the guide frame and the connections, how many pounds of material?

"A. I did not put it into pounds, because I could not measure it.

"Q. Well, how many pounds would it represent in weight if the value was $140,000, because the value of a holder depends on its weight, does it not, and the
41003 amount of material in it?

"A. Yes.

"Q. Let us see. What would you say the weight of these holders was, to equal $140,000?

"A. I have not figured that up at all. I based it entirely on the capacity of the holder. As I say, those holders are counterbalanced, and I went there several times to take the pressures on them, and was always frustrated, in one way or another."

Do you remember being asked those questions and making those answers?

A. I remember counterbalancing a holder and not getting the exact pressure and I calculated it some other
41004 way, yes.

The Master: Do you remember those questions and answers?

The Witness: No, I do not remember any questions and answers definitely. I think probably they occurred as stated there.

Mr. O'Brien: Judge Ransom, as a matter of common ordinary fairness to the witness, why don't you read the next questions there?

Mr. Ransom: He says he read them all.

Mr. O'Brien: You want to save some time for

the complainant. This is not effective in the case; it is a waste of time.

Mr. Ransom: I will be the judge about that.

Q. About the other two holders, Mr. Edgerton, do you remember being asked these questions and making these answers at page 5355 of the Circuit Court record, page 3805 of the Supreme Court record:

"Q. I merely asked you whether you had the weight, or can you state the weight you assumed for those two holders?

"A. I did not figure out the weight at all, because I did not have the data. I had to put it on the capa- 41096
city, and I figured that cost out entirely on capacity per thousand, comparing with prices I have obtained."

Mr. O'Brien: Now, can you state what holders you are talking about? Unless you do, I object to the question as vague. He starts at page 3804 asking about holders, without definitely stating where they are. The record will not mean anything to you or anybody else reviewing it. Then he jumps down to page 3804 and he starts to ask more questions about holders. They are different holders.

The Master: He said they were different holders. Mr. Ransom called attention to the fact 41097
they were different holders.

Mr. Ransom: If Mr. O'Brien had read this record that was put in he would not make those statements.

The Master: I do not know that the witness answered that.

Q. Do you remember making that statement about those two holders?

A. There were certain holders that were counterbalanced; that is, had weights that counterbalanced them, and took off the weight of the holder. I spoke

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about that and I tried to get them to drop that counterbalance so I could get the exact pressures, and they would not do it, would not raise up the holders for me. The holders had to be full to weigh them.

By the Master:

Q. Those holders that were counterbalanced you could not estimate by weight, then?

A. No, but I could—

Q. Mr. Edgerton, the only point about it is that the counterbalanced holders you estimated by capacity rather than by weight, isn't that so?

41099 A. Yes, I must have done so, or I could not weigh the counterbalanced holder.

The Master: That is all it amounts to. It does not make a bit of difference as to the effect of your testimony whether you did it one way or the other so long as we get it right.

Mr. Ransom: Except it has a good deal to do with his credibility.

The Master: This is thirteen or fourteen years ago.

Mr. Ransom: He has been reading his testimony here for days, and cannot even remember his testimony.

41100 The Witness: I have not read the testimony. You are mistaken about that.

By Mr. Ransom:

Q. Do you remember being asked these questions and making these answers with respect to the two holders at the 65th Street station, Supreme Court record page 3818, Circuit Court record page 5352:

"Q. Mr. Edgerton, the two holders at the 65th Street station which Mr. Logan valued at $52,000 and Mr. Mayer at $57,000, I see you value at only $32,000, and the same about the four holders at that station which Mr. Logan valued at $104,000 and Mr. Mayer

valued at $140,000, and you valued them at only $65,000, or a fraction in each case. Did you go over those holders also and get your estimate of weight?

"A. No, those I calculated by the cubic contents. Not having the weight, I based those on the cost per thousand cubic feet for holders of that—

"Q. What did you estimate that those holders would throw in pressure?

"A. Well, I say I did not estimate on that, that the price we allowed them to throw a good pressure."

Do you remember being asked those questions and making those answers? 41102

A. No, I do not remember.

The Master: Do you remember the fact?

The Witness: I remember that there were certain holders that for some reason we could not get the pressure on.

The Master: Do you remember whether they were the 65th Street holders or not?

The Witness: I think very likely. Were those the Logan holders, or did Logan value them?

The Master: Logan valued them, and Mayer. You were the lowest, Logan next and Mayer the highest, and then the Master guessed at who was right. 41103

Mr. O'Brien: I would ask what page that was read from?

Mr. Ransom: Page 3818 of the record you are following Mr. O'Brien.

The Master: All of which goes to show the uselessness of this expert testimony as to values.

Q. With respect to your calculations, your estimate was based on the assumption that there were no foundations under the 21st Street buildings and water gas apparatus, was it not?

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A. There were some old foundations that were not used.

Q. No, just answer my question. You did not make any provision or any allowance for foundations under the 21st Street buildings or the 21st Street water gas apparatus, did you?

A. Because there were previous foundations there.

The Master: No, just answer that question. Did you make any allowance for foundations?

The Witness: Certainly I did. Of course I gave foundations. You will find it there in the

41105 record somewhere.

Q. Can you call attention to it; can you find it?

A. I will find it; yes, sir. I have a recollection there was some mystification about foundations because there were changes in the buildings. There were three different processes of gas making there and—

Q. Did you take any piling—

Mr. O'Brien: Just a minute. Go ahead, Mr. Edgerton.

The Master: Yes, proceed. Read the answer as far as he has gone.

(The stenographer repeated the answer.)

41106 The Witness (continuing): And a number of the foundations had passed out of use entirely. There was nothing on the foundations at all to hold it, so I left those out.

Q. Did you make any allowance for pile foundations under the building?

A. Under part; the rest of it was clay and rock, and I did not see how you could drive piles in clay and rock, and I left it out, yes. Mr. Rowland left it out also.

The Master: Strike that out. On the theory of attacking credibility, you have had the six hold-

41107

ers at 14th Street and you have had the six holders over there at another place and two holders somewhere else.

Mr. O'Brien: All of which is clearly shown on the testimony, if he reads the testimony.

The Master: All of which amounts to nothing in this case, in my judgment.

Mr. Ransom: Well, your Honor received it.

The Master: But you started it. Your complaint alleges values in 1905. You put in the Mayer testimony and the Simpson testimony in 1905.

Mr. Ransom: That is what the Supreme Court found in 1905. 41108

The Master: I had to take it.

Mr. Ransom: And I had to cross-examine on it.

The Master: But it should not have been in the complaint. It should not have been offered, in my judgment. I do not think the courts are ever going to bother with it at this late date. What they did in 1906 is an entirely different matter. The whole case turns on what happened in the last few years; whether on account of the conditions that have existed in the last two or three years there is confiscation on the property, or 41109
whether Mr. Chambers' theory of the case is right, and when Mr. Chambers is right that just because you have had more than a fair return for a number of years you have to lose some now.

Mr. Chambers: That is not my theory. Your Honor does not do justice to my theory, which is a correct and good one. I will be back some day and show you that my theory in equity is correct.

The Master: Nothing that I have ever said should indicate that I am not sometimes wrong. As I said before, though judges and courts

sometimes disagree with me, I have got to submit to the proposition that the decision is against me, and, therefore, though they say I am wrong, it never changes my own views about it.

Mr. Chambers: I am basing my proposition on what they have heretofore held. They have set a fair return on the fair value of their property. That does not mean in abnormal times, if they have made more than a fair return at other times.

The Master: How much more?

41111 Mr. Chambers: It means an average.

The Master: How much more than a fair return?

Mr. Chambers: Why, it means averaging over a reasonable period. Now, I am satisfied, I don't care what the courts below say or do—I am satisfied to argue that before the nine judges in the United States Supreme Court, and I am confident of being successful.

Q. How did you estimate or calculate the weight of guide frames?

A. In some cases I took a percentage of the weight of the holders for the guide frames sustaining the
41112 holders, and the size and weight of the holders determines the guide framing necessary, and I took that proportion. In other cases I measured where I could, and if there were any holes to get in and measure the thickness of the iron I calculated the guide frames and measured some parts with a micrometer.

Q. Can you give us any idea in what proportion of the cases you calculated and in what proportion of the cases you did not even make a calculation?

A. No, I could not. What I was up against was there was no way of getting at the thickness of the

columns, and where they had the thickness of the columns I could get at it by finding a hole or some place where I could measure the thickness, and I calculated it.

Q. Would you say that you calculated half of them?

A. Yes, I took all those modern guide frames; where they used wrought iron I would make the calculation. A number of those holders are cast iron.

Q. Would you say that you calculated more than half of them? 41114

A. Well, I cannot say that now. I cannot say what proportion.

Q. With respect to the various kinds of water gas apparatus, did you compute the weight and the like or did you estimate it?

A. I computed the weight.

Q. In all cases?

A. I was perfectly well acquainted with—

Q. In all cases?

A. In all cases. The water gas machines were down and they were open and I could get into them and look around them and measure them, and I was perfectly well acquainted with these machines. 41115
I had been with them for ten or twelve years.

Q. I ask you whether you remember being asked these questions and making these answers at page 3830 of the Supreme Court record, page 5373 of the Circuit Court record:

"Q. Now, in reference to the apparatus at these various stations, did you compute the weight of the apparatus and the various items of apparatus and compute the full value of them, based on the weight multiplied by a certain number of cents per pound?

"A. Yes.

"Q. In every case?

"A. Not in very case. In the case of a purifier box, if it differed slightly only in size and depth, I computed it according to the ones that I had computed in detail. That is, say a box is 20 x 22 and another box is 22 x 22, the alteration was merely made in the bottom, or the extra amount added on that that would require for that amount of iron at the rate in which I found it in each case.

"Q. But as a matter of fact, when you got back to the bottom, that also was computed on an assumed
41117 weight, multiplied by a cost per pound of that weight?

"A. Yes.

"Q. Now, what classes of apparatus, if you will state, did you compute in that way according to that method?

"A. All I computed were computed by weights and by units of material.

"Q. But what classes of apparatus, did you compute?

"A. All I computed, that is, every one of them, I don't know what classes, every class; that is, the generators and superheaters and carburetors and purifiers and all the framing that I computed; it
41118 was all computed by weight except in those instances where I told you I could not get at the weight.

"Q. And those which were not computed by weight included the rest of the apparatus, such as engines and pumps and so forth?

"A. Engines and pumps were computed as a unit for the price of an engine and allowing for setting up; of course, I did not compute the parts of an engine nor the weight of a cylinder or piston rod. I took it as a complete thing.

"Q. So I understood. And you think you have named the general classes of apparatus for which

you did compute a value by taking what you assumed to be the weight and the value per pound of material?

"A. Yes. I did not assume the weight. I calculated it.

"Q. Yes, what you took to be the weight, put it that way?

"A. Yes.

"Q. Do I understand that you measured every single piece of apparatus in all these plants at the time of your disposal for this recent examination?

"A. I checked off in a number of cases Mr. Mayer's 41120
measurements, and in a number of others I took it where I had not any reason to doubt it."

Do you remember being asked those questions and making those answers?

A. It sounds reasonable, substantially. I made measurements wherever I could get them and—

Q. Well, were those questions and answers correct?

The Master: Go ahead. You made measurements wherever you could get them?

The Witness: Yes, and I got them as a general thing, and I talked of visiting there several times on that very point. But sometimes they 41121
tried to stave me off and chased me away in one case when I was visiting the 14th Street holders, and made me come down off it—Mr. Riblet, yes. I did it especially for that purpose, and I climbed up near the top of the holder and he made me come down.

Mr. Ransom: I move to strike that out.

The Master: No, I will let it stand.

Q. In the matter of general connections, you did not base your estimate on what the company actually had, did you?

A. Not all connections. I calculated mains where I could not get at them to see them. They are underground, according to the amount of gas that would have to pass through and the distance it would have to run. On 14th Street I found that there were numerous connections there that had not anything to do with that plant. They were—

Mr. Ransom: I move to strike out his statement. How can he say that?

The Master: I will allow it.

Mr. O'Brien: He has not finished.

41123 Mr. Ransom: He is never finished; he will wander on all through time eternal.

Mr. O'Brien: There is no wandering about this.

The Witness: The connections of the pumping station there—

Mr. O'Brien: At 14th Street?

The Witness: At 14th Street—

Mr. Ransom: I object to his statement. He does not know anything about it.

The Witness (continuing): That is calculated and included.

Mr. O'Brien: Just a minute now. I object, 41124 your Honor. This is perfectly within the question.

Mr. Ransom: I did not ask him about what he said was used or not.

The Master: Finish that statement. Was there anything else you wanted to say? You said 14th Street connections were included.

The Witness: Right in 14th Street there was a pumping station and I was struck with the immense number of great big valves that Mr. Mayer has in his appraisal at that station. I was looking around for them and I come to

find out it was this pumping station had the valves.

The Master: And you eliminated a lot of them, did you?

The Witness: I eliminated them from the station connections, that is what you call yard connections, certainly.

Mr. O'Brien: Did you put them in somewhere else?

Mr. Ransom: I object to that.

The Witness: Yes, they were put in somewhere along in the calculations. 41126

Q. As a matter of fact, so far as these yard connections and the like are concerned, your appraisal was made up simply on the basis of what you thought the company ought to have rather than what they did have?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. No, sir, I did not make it that way at all.

The Master: If you have anything in conflict with that, let us have it.

Mr. Ransom: I am going to read it. 41127

Q. Do you remember being asked this question and making this answer at page 3640 of the Supreme Court record, page 5116 of the Circuit Court record:

"Q. In making your appraisal of the yard connections, did you inspect and examine the yard connections?

"A. As much as was possible, but most of these connections were underground and therefore in regard to the value of the yard connections I had to base it on the capacity of the plant as it usually

required for the output of gas for the plants. That is, there is a certain factor that will give the ordinary connection necessary for gas and tar throughout the works and I adopted that in place of a complete measurement of the connections. Another reason being that those works have been changed a number of times. They started out as coal gas works, and then changed to Tessie du Motay process works and then into the Lowe process works, which involved undoubtedly a considerable amount of duplication."

Do you remember being asked that question?

41129 A. I saw little evidence of duplication there.

Q. Do you remember being asked that question and making that answer?

A. I think very likely there was something said about that.

Q. Did you say what I have just read to you about that?

The Master: Why, he said that, because he said it here. There is not anything in conflict there with what he said here. He said substantially the same thing a few minutes ago, that he felt there were a lot of connections that were unnecessary by reason of the changed situations around, and he figured the number of connections that he had in a plant of that kind. He could not look at them and could not dig them up.

41130

Mr. Ransom: I think that is all.

The Master: Anything else, Mr. O'Brien?

Mr. O'Brien: Your Honor, I would like a few minutes before continuing the re-direct with the witness, just to fit in a few of these propositions that he has been asked about, where the excerpt from his testimony was not complete. That is the only thing I am concerned

41131

with. In any instances, in fact most of them where I had the record before me, Judge Ransom would proceed and ask a question as to what the witness—

Mr. Ransom: I object to the comment of counsel; it is not based on facts.

Mr. O'Brien (continuing): What the witness said in the old case, and then when he came to some question and answer that brought out a clear explanation of the point which Mr. Mathewson, the examiner, had in his mind, he would jump over that and then he would go on to some other pages.

41132

The Master: If you have anything to ask, ask it now.

Mr. O'Brien: Well, it would take up a little time to be jumping from one page to the other.

The Master: I do not believe there is any question there that you can properly ask, that you have in mind; therefore I am pressing you now. If you think I am going to let you read questions and answers from that record and let you ask Mr. Edgerton whether he remembers being asked these questions and these answers, I will not allow it. This is not the place nor the time nor the way to do it. There are certain points covered by Mr. Edgerton. I allowed him, so far as I could, I think, to explain anything that he wanted to explain as he went long. Now if you say that Mr. Edgerton's statement made here, or any intimation made, that there were certain holders that he did not actually measure, but he took by capacity the counterbalanced holders, I will let you ask him.

41133

Mr. O'Brien: I will endeavor to do the best I can without going into the record to bring out those isolated questions and answers of Judge

Ransom. I called the Court's attention to it at the time.

The Master: You should have made a memorandum of them.

Mr. O'Brien: I have a memorandum of them, but it is going to take up that much time.

The Master: We will see how much time it takes.

Mr. O'Brien: Perhaps I can cover it in one question.

RE-DIRECT EXAMINATION BY MR. O'BRIEN:

41135 Q. Can you recall now, Mr. Edgerton, the specific holders where you were not able to determine the weight and you made your appraisal by some other method, so far as the weight went?

A. Yes, those that were counterbalanced I could not weigh, although I tried to get them to hitch up the counterbalance so it would not counterbalance.

Q. Give us as your memory serves you now the locations of those holders where you were not able by reason of the tank not being filled, or for some other reason, to make a determination of the weights?

A. Well, there were those naphtha holders at 14th Street, and when I first examined them they were

41136 down.

The Master: No, I have got to stop this. Just tell what holders were counterbalanced so you could not weigh them.

The Witness: Well, I was going to add—

The Master: No, I do not want you to add; I do want you to give us the places and what holders they were. The 14th Street holders?

The Witness: I only remember the 14th Street holders being counterbalanced. Those were the only holders that were counterbalanced, and some of those were not counterbalanced because they were down and had been out of use.

Q. At this time you do not recall any others that were in a similar condition?

A. No, I don't remember any other counterbalanced holders except those old two-lift holders, and perhaps at 18th Street; there was a similar outfit at 18 Street to 14th.

Q. Prior to the time that you took up an investigation of the plants of the complainant company for the purposes of testifying in the prior suit how frequently had you visited these plants of the complainant company?

Mr. Ransom: Objected to. 41138

Mr. Ransom: I will rule it out as sufficiently covered. It has been exhaustively covered and you have asked it and Mr. Ransom has asked it before. He has told all about it; I won't allow it.

Mr. O'Brien: Exception. I really do not want to take up the time of the Court by going deeper into that if the Court is satisfied that the record is complete on the subject.

The Master: There is no question about it.

Mr. O'Brien: The visits of the witness. If there is any doubt about it, I will go into that minutely here and have the witness give us again 41139 his best recollection as to when his examination of the plants began for the purposes of the prior suit.

The Master: I won't take it. It is covered sufficiently.

Q. Mr. Edgerton, in conjunction with your examination of the physical properties of the plant, did you examine the manufacturing results and the other records showing the processes of manufacture, the quantities of materials and the usual data that is set up in

the Gas Company records, for the purposes of making your calculations as to the plants?

Mr. Ransom: I object to it as not re-direct examination.

The Master: I will allow it.

Mr. Ransom: I have asked no question on that subject.

The Master: I know you have not. I am going to allow that one question.

Mr. Ransom: Exception.

The Master: You can answer that just yes or

41141 no. Did you examine it?

A. I did, all the records.

Q. And that meant the records of every station?

Mr. Ransom: Objected to.

A. Every station, every station they ran.

Q. How many times did you go to the 14th Street station to take the pressure of the holders?

Mr. Ransom: Objected to.

The Master: That question will not be allowed: it is fully covered.

Mr. O'Brien: Exception.

Q. Did you take with you your apparatus, pressure gauges and other implements necessary for making the

41142 determination of the weight of the holders?

The Master: The question is not allowed as fully covered.

Mr. O'Brien: Exception to both rulings.

Q. Were you prevented by Mr. Riblet from making the determination of the weights of the holders?

Mr. Ransom: Objected to.

The Master: The question is not allowed. Mr. Edgerton has already told us about Mr. Riblet chasing him down from the holder.

Mr. O'Brien: Exception.

The Witness: From the biggest holder.

Q. Mr. Edgerton, do you recall your going to the office in connection with the examination you made of the books of the company for the purposes of this suit, and asking for the manufacturing reports of the 99th Street station?

Mr. Ransom: Objected to as not re-direct examination.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did Mr. Davidson, in compliance with your request, hand you a book which was designated by him in this suit here as the office copy? 41144

Mr. Ransom: Objected to as not re-direct.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. And did he state at the time whether that book was an office copy?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did he later, at my request, when I called his attention to the fact that the office copy was not the book that was offered in evidence—I mean was presented in court in the trial of this action—say that he would send for the 99th Street station original copy and bring it down? 41145

Mr. Ransom: I object to the question as grossly improper, for counsel to so grossly misrepresent the facts.

The Master: Objection sustained.

Mr. O'Brien: Your Honor is ruling it out because it is not re-direct examination?

The Master: It is ruled out for various reasons, one of them being it is not re-direct examination.

Mr. O'Brien: Then I will recall him when we get the 1910 results in.

The Master: I am ruling on what you are doing now.

Mr. O'Brien: Your Honor is going to hold the defendants rigidly to the rule of presentation or

The Master: I am making the rule that you heard. You draw your own inferences.

Mr. O'Brien: I take an exception to your Honor's ruling.

Q. What years, Mr. Edgerton, did you have the plant at Danbury, Connecticut?

41147 Mr. Ransom: Objected to as not re-direct.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, this is re-direct.

The Master: No.

Mr. O'Brien: He was asked about the materials and supplies bought in New York during certain periods, and the employment of men, and all that subject was opened up.

The Master: I am ruling that it is not re-direct.

Mr. O'Brien: Exception.

Q. Did you in connection with your management of the Danbury plant at Danbury, Connecticut, pur-

41148 chase materials and supplies, used in the making of gas in that plant, in New York City?

Mr. Ransom: Objected to.

The Master: Objection sustained. It is not re-direct and it is fully covered.

Mr. Ransom: That is too remote and ancient.

The Master: And it is fully covered. The witness said he bought his supplies in New York. Isn't that so, Mr. Edgerton?

The Witness: Yes, sir. I told you millions of supplies.

The Master: You told us that yesterday?

The Witness: Well, it did not particularly apply to Danbury.

Q. What did you say about millions?

A. Millions of supplies.

The Master: It is covered.

Q. Mr. Edgerton, will you state during the summer months of 1905 what the excess was of the gas that the Consolidated Company sold over what they made?

Mr. Ransom: Objected to as incompetent and improper. 41150

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did you make an examination of the accounts of the Consolidated Gas Company for the year 1905 for the purpose of determining what their unaccounted for gas was?

Mr. Ransom: Objected to as incompetent and not re-direct.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. And did you make a determination as to how much unaccounted for, if any, there might be during the summer months of that year? 41151

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you state how you made your calculations and upon what books or records of the company your calculations were based?

The Master: Same ruling.

Q. Will you state what were the months of 1905 in which the company represented on their books that they sold more than they made?

Mr. Ransom: Objected to as grossly improper.

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Witness: Made and bought.

Q. Did these calculations include what they represented on their books that they bought during the said months?

Mr Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did your calculations or your conclusions from
41153 the calculations made as to the amount of gas that they represented themselves as selling or as having sold—did they include also the gas that was bought from the affiliated companies?

Mr. Ransom: Objected to as incompetent.

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Ransom: It is very improper to spread this fiction on the record.

Mr. O'Brien: You, your Honor, have opened this up, and it is certainly perfect re-direct so far as your examination on this subject went. You expressed surprise that a gas company should
41154 sell more than they made, or that they bought, and thereby hangs a tale; and I think it is perfectly proper for me now under my own questioning to satisfy the Master's craving for information on that subject.

The Master: The only trouble with you and me is that we do not agree.

Mr. O'Brien: There is a chemical disaffinity between you and me in this case.

The Master: Yes, sir.

Mr. O'Brien: That is the surest bet you have ever made.

Mr. Ransom: It is the most creditable thing you have ever said about anybody in this case.

Mr. O'Brien: Now, this is between myself and the Master, Judge Ransom. The Master does not need your poor little chicken help at this time. That is all.

(The witness was excused.)

Mr. O'Brien: I wanted to examine the redirect testimony of Mr. Edgerton and I may want to recall him later, your Honor.

The Master: If there is something useful I will let you recall him. 41156

MAYNE S. HOWARD, recalled.

CROSS-EXAMINATION BY MR. VILAS:

Q. Mr. Howard, you testified that this Exhibit 451 is derived from Defendants' Exhibits AA-255 and AA-256, showing tax accruals and tax payments between the years 1906 and 1918—is that right?

A. Yes, sir.

Q. That is the exhibit put in by Mr. Gottlieb?

A. Yes, Mr. Gottlieb's two exhibits. 41157

Q. On Exhibit 451 you have attempted to distribute the tax payments to the years for which the taxes are applicable?

A. Yes, sir.

Q. Disregarding the years in which the taxes were actually paid?

A. Yes, sir.

Q. That is, if the tax was paid in 1919, or in 1916, and it was a 1915 tax, you have so shown it in your tables?

A. Yes, sir.

Q. In distributing these various items between gas and non-gas, you stated that you have, with respect to the real estate taxes, followed a written table furnished by Dr. Maltbie?

A. Note on utility land, of December 16, 1919, by Dr. Maltbie.

Q. In distributing taxes you have followed that classification as outlined by Dr. Maltbie's notes?

A. Yes, sir.

Q. Do your tables anywhere include interest on taxes?

41159 A. There is a very small amount of interest included here, as I have stated there in the note at the top of the schedule.

Q. With the exception of this very small amount you state you have excluded interest on taxes?

A. Yes, sir.

Q. Your intention was to exclude interest on taxes?

A. The interest I have included is infinitesimal, the interest that may be included.

Q. Did you make any examination of the company's books?

A. No, sir.

41160 Q. You did not examine the books?

A. No, sir.

Q. In any respect?

A. No, sir.

Q. You took Mr. Gottlieb's tables as your basis?

A. Yes, sir.

Q. So that all the figures in your table may be found by reference to one or the other of the Gottlieb exhibits?

A. That is true.

Q. Mr. Howard, you did not make any investigation to determine whether as a matter of fact in pay-

ing past subtaxes interest thereon was paid by the company?

A. No, sir. In Mr. Gottlieb's table you will find various notes stating such and such amounts of interest are included, but those interest amounts I have in all cases, where we had the amount, excluded from this table.

Q. Mr. Gottlieb's table did show interest?

A. Yes, sir.

The Master: But Mr. Howard's table has excluded it?

The Witness: Yes, I have excluded interest 41162
on taxes.

Q. In your item of special franchise tax, 1913 to 1918, inclusive, do you include the total tax levied or the total tax paid?

A. This is the tax paid.

Q. Did you learn that the company is contesting portions of the special franchise taxes for those years?

A. That is my understanding.

Q. And that certain portions have not been paid?

A. Yes, sir.

The Master: In other words, the amount charged for those years is more than you show?

The Witness: Yes, the amount levied in these 41163
later years, I think in each case is in excess of the amount shown here as paid.

The Master: And it is still an open question?

The Witness: It is more or less possible that it is an open question.

Q. That is, these amounts which you have failed to show are still carried as accrued taxes?

A. Yes, sir, in the company tax liability account.

Q. And may be found also on reference to Mr. Gottlieb's exhibit of tax accruals?

A. I think they are shown in the tax accruals.

41164 Mayne S. Howard, Cross.

Q. In omitting these unpaid portions of the levied taxes, are you assuming that the company would be successful in this litigation?

The Master: Well, I don't suppose Mr. Howard is assuming anything. He has drawn a paper in accordance with instructions. Is that the idea?

The Witness: Yes, sir.

The Master: It is drawn on the theory at any rate that the company may not have to pay it.

41165 The Witness: The instructions were to distribute the taxes paid.

The Master: Well, it must be on the theory that the company will not have to pay any more, isn't it?

The Witness: Well, I would not state what the theory is, but in my opinion it was assumed that the special franchise taxes unpaid, which were being disputed by the company, should be excluded from his gas cost statement of taxes.

Q. As a matter of fact you exercised no discretion in that?

A. No, sir.

41166 Q. You followed instructions?

A. Yes, sir.

The Master: It is perfectly clear what he did. He made up a table showing exactly what was paid, and care must be taken by any Court reviewing my report to see to it that that is not accepted as a correct statement of tax accruals, levied or collectible by the state or city.

Mr. Clark: It is not presented for that.

The Master: The trouble is, that a lot of these statements are apt to mislead, and I am

making this statement on the record that as to many of these tables that have come in, they are apt to mislead unless great care is taken to analyze them.

Q. So that if in the future this litigation should terminate unfavorably to the company they would be obliged to pay these additional amounts, with interest thereon?

Mr. Clark: I object to that as incompetent, irrelevant and immaterial.

The Master: I will allow it, to make it perfectly clear. 41168

Q. That is true, is it not, Mr. Howard?

A. Yes. If they have to pay these extra taxes for those years which are excluded of course such extra taxes would be an additional liability, an additional burden.

Q. For those years?

A. For those years for which they paid additional taxes.

Q. And the same is true of the item of real estate of corporation tax, is it not? Those that you found under contest you have omitted?

A. Yes, sir, if they have to pay those taxes for those years, then such taxes would be additional to 41169 what we have included in the table.

Q. You have shown certain amounts in brackets under that item for certain years. What do those amounts represent?

A. Those amounts represent—

The Master: 1914, 1915, 1916, 1917 and 1918.

A. Yes, sir, 1914 to 1918. We took Defendants' Exhibits AA-272 to AA-276, which are the company's applications for correction filed with the Commissioner of Taxes and Assessments. Now, in those ap-

plications for correction the company has claimed the bulk of these assessments is covered by the special franchise tax assessments.

Q. And you have assumed that that claim is a correct claim?

A. On the basis of the experience from the years 1906 to 1912, or to 1913—there are three years there that they paid none and the other five years you see the amounts are very trifling. On the basis of such experience we assumed—

The Master: That that claim was correct?

41171 The Witness: That that claim was probably correct, and that the amounts we have put in would probably be the maximum final liability.

Q. Those amounts you have shown in brackets are the amounts for which no contest is made in those various years?

A. I think the contest is made with regard to the whole of the assessment.

Q. Then how did you arrive at those figures?

A. Those figures were arrived at as follows: Take the total assessment and subtract the assessment the company claims as being a duplication of the special franchise assessment. Taking these balances, multiply

41172 such balances by the tax rate. Those were the instructions to the man who developed those figures.

Q. You did not develop those figures yourself?

A. No, sir, I did not develop those particular figures myself.

Q. You took them from some one else?

A. I am satisfied that they are correct. It ought to be added, however, that some of these cases with regard to these amounts shown, the company claims that there is a duplication because part of the property is covered by the assessment of contiguous real estate.

and I think they contest the whole business on the ground that the property is inadequately or incompletely described.

Q. These amounts that you do show in brackets there as a matter of fact have not been paid?

A. No, they have not been paid.

Q. But they are carried as accrued taxes?

A. Yes, sir.

Q. Did you include them in the sum at the foot of your columns?

A. I am very positive they are added into that total 41174

Q. Why did you take these amounts which have not been paid. Where you failed to show amount not paid in special franchise taxes?

Mr. Clark: I object to the question. It is quite plain what he did.

The Master: Objection overruled.

Mr. Clark: Exception.

A. We have put these in there because they represent what we think will be the very maximum liability in connection with these very big assessments.

Q. Why did you not include a Federal Income Tax for 1918?

A. I was instructed to leave that out of the gas 41175 cost taxes.

Q. Well, you did not include it in non-gas taxes either, as you call them?

A. The Federal Income Taxes?

Q. For 1918?

A. They had not been paid I believe at the time Exhibits 255 and 256 were drawn up.

The Master: What, Federal Income Taxes were not paid at the end of the year 1919?

The Witness: At the end of the year 1918.

The Master: But the statements were made up at the end of the year 1919?

Mr. Vilas: 1920.

Q. You will find some notes marked A and B on these tables which will shed some light on them, if my recollection serves me right.

The Master: I doubt myself whether Federal Income Taxes are a proper charge, but I think it ought to be on the statement.

Mr. Vilas: I am prepared to debate that question with you.

41177 The Master: Well, I am prepared to lick you, I think. I likewise think that perhaps we have got to exclude this duplicated tax item.

Mr. Vilas: Of course we are not claiming any Federal Income Tax in 1918, when there was a deficit from operation. Where there is no income there is no tax.

The Master: Even if there is an income I think so far as the public is concerned they are not interested in the tax you have to pay to the Government.

Mr. Vilas: That is not true in the case of any other industry, is it?

41178 The Master: That may be so, but I think so far as the question of confiscation is concerned the state is not interested in what you have to pay to the Federal Government, because of the profits you earn, or the return on your invested capital.

Mr. Vilas: Suppose the item of taxes is what determines confiscation or nonconfiscation?

The Master: Don't let us debate it now.

Q. In the table AA-256, Exhibit AA-256, the last tax shown there is $297,350.80, in 1918. We show that in our 1917 column in this Exhibit AA-451.

By the Master:

Q. You understand that in this table the figure $270,350.80 under 1918 is only the year in which it was paid, but it is applicable to 1917?

A. Yes, sir.

Q. So that the man who made up Exhibit 256 did not give you the 1918 tax paid in 1919?

A. What he has given there is the taxes paid down to the date as of which that table is applicable.

Q. But he didn't give you the 1918 tax paid in 1919?

A. That is true. 41180

Q. And that is why you haven't it in this?

A. Yes, sir. We show our last tax shown there in 1918 as paid, we show it in our 1917 column.

The Master: He hasn't got it, that is all there is about it.

By Mr. Vilas:

Q. Did you ascertain, Mr. Howard, that early in 1919 there was paid for the 1918 Federal Income Tax the amount of $99,877.57?

A. For what year?

Q. For 1918?

A. In addition to what is shown on Mr. Gottlieb's table? 41181

Q. Yes?

A. I didn't know that.

Q. You did not examine the books to ascertain if there was a Federal Income Tax in 1918 which might have been paid after the first of the year?

A. I did not. To repeat what I stated before, I did not go beyond Exhibit AA-256.

Q. You took what you found there?

A. Yes, sir.

Q. Did you ascertain that for the years 1909 to

41182 Mayne S. Howard, Cross.

1914, inclusive, there were additional payments made upon Federal Income Tax for those years approximately $68,000?

A. What years?

Q. 1909 to 1914, inclusive.

A. There wasn't any Federal Income Tax in 1909. It was unconstitutional until I think the year 1912.

Q. Did you ascertain that there were Federal Taxes paid during those years?

A. In addition to what we have?

Q. In addition to what is shown there, amount-
41183 ing to $68,000?

A. I did not ascertain that.

Q. Referring to what you call Federal Corporation Taxes, did you ascertain that these items paid in subsequent years were charged directly to profit and loss?

A. I did not ascertain the fact that there were such payments.

Q. You did not examine the books to check up on your table?

A. I did not examine the books?

Q. Now, in the Personal Property Tax you followed Mr. Teele's classification throughout the years
41184 from 1906 to 1917?

A. Yes, sir.

Q. For those years you show the Personal Property Tax as a gas tax?

A. Personal Tax, I think it is called. We show the 1906 to 1915 Personal Tax, all of it, under Gas Cost Taxes. We show the amount every year except 1906, where they are small, and I presume if we had cared to we could have distributed those showing part of them as non-gas cost taxes.

Q. In 1918 you show one-third of this tax as a

gas tax, and two-thirds as what you call non-gas taxes. That is an approximate amount, isn't it?

A. I think it is exactly one-third.

Q. Did you undertake to divide it exactly one-third and two-thirds?

A. Yes, sir, I think it is exactly one-third.

Q. You did that under instructions from Dr. Weber?

A. Yes, sir.

Q. Did he give you the basis for this, or did you yourself examine Complainant's Exhibit No. 375 and arrive at a conclusion as to the items therein which 41186
were gas items and items which you thought were non-gas items?

A. Yes, sir, I looked at Exhibit No. 375.

Q. Did you make an analysis of that exhibit?

A. Yes, sir.

Q. Are you familiar with the section of the Tax Law controlling the assessment of these taxes?

A. I cannot remember it, I cannot repeat it; I have a general idea.

Q. You have read it, have you, Section 12?

A. I have not read it recently probably, but I have read it sometime or other.

Q. It is Section 12 of the Tax Law, isn't it? 41187

A. I don't remember the section.

Q. This is Exhibit 375 which you examined, is it?

A. Yes, sir, that is the same statement that I examined.

Q. Now, this exhibit is the company's application for a reduction of the Personal Property Tax Assessment, isn't it?

A. Yes, sir, for the year 1919.

Q. For the year 1919?

A. Yes, sir.

41188 Mayne S. Howard, Cross.

Q. And you used that as a division of the Personal Property Tax for the year 1918?

A. Yes, sir, that is true.

Q. Did you find that the assessment for the Personal Property Tax in 1918 was a million dollars?

A. If I remember right it was a million dollars, and two million in 1919.

Q. It was raised to two million in 1919?

A. Yes, sir.

Q. And this application for reduction was made?

A. Yes, sir.

41189 Q. Did you find that it resulted in a reduction of the amount of the assessment?

A. In the year 1919?

Q. For the year 1919.

A. I do not know that such is the case.

Q. You did not go into that at all?

A. No, sir.

Q. You merely used this 1919 application as a basis for dividing the 1918 tax?

A. That is correct.

Q. And you did not know the amount which was finally assessed for the 1919 tax?

A. No, sir.

41190 Q. This exhibit on its inner two pages comprises a statement of assets on the first of the inner pages, and a statement of deductions claimed on the other, does it not?

A. Yes, sir.

Q. And that statement is made up on a printed form furnished by the Tax Department?

A. Yes, sir.

Q. And the statement of assets and the deductions claimed are the items prescribed by the section of the Tax Law relating to this tax, are they not?

A. I think so.

The Master: At any rate they are prescribed by the form?

The Witness: That is the form.

Q. Now, you find on the assets side a number of items which are specifically balanced by like items on the other side of the paper, do you not? For instance, the first item, Value of Real Estate, $40,770,500 is specifically balanced on the deduction side?

A. Yes, sir.

Q. Likewise the item, Investments on which tax has been paid under another section $9,644,209.85, is specifically found on the opposite side? 41192

A. Yes, sir.

Q. Likewise the item, United States Bonds, $1,630,700?

A. Yes, sir.

Q. Also Item No. 9, Bonds of Municipalities and the State, $3,033.75?

A. Yes, sir.

Q. And Item No. 10, New York Mortgages and Bonds Secured thereby, $375,000?

A. Yes, sir.

Q. And Item 12a, New York Corporations, $80,088,878.09?

A. Yes, sir. 41193

Q. Those items that I have enumerated are specifically balanced by the same items on the opposite side—am I right?

A. Yes, sir.

Q. That leaves the following items which are not specifically in themselves deducted upon the other side of the statement: Item No. 3, goods, wares and merchandise, including all imported goods, $1,484,131.01?

A. Yes, sir.

41194 Magne S. Howard, Cross.

Q. Horses, animals, wagons, automobiles, trucks, other vehicles and scows, $156,514.78.

A. That is correct.

Q. Cash on hand and on deposit, $722,241.71.

A. Yes, sir.

Q. And other notes, bonds, mortgages and debts owing to the corporation, $26,813,773.06.

A. That is correct.

Q. Meters and connections, $5,035,760.78.

A. Yes, sir.

Q. Furniture and fixtures, $539,375.01.

41195 A. Yes, sir.

Q. Tools and implements, $164,733.73?

A. Yes, sir.

Q. Gas appliances rented, $3,471,556.73?

A. That is correct.

Q. Services, proportion located on private property, $692,304.61.

A. Yes, sir.

Q. And there are in addition to or as offset against those items, eliminating those which are duplicated on each side, an item, indebtedness not incurred or contracted for the purpose of evading taxation, etc., $28,409,248.75, that item being composed of

41196 indebtedness evidenced by bonds not secured by mortgage on real estate, $24,846,772.50, and indebtedness on open accounts, $3,562,476.25—is that right? Just look at the figures.

The Master: In other words, in addition to those specific balancing items that deduction appears?

A. I assume he has read it correctly.

Q. The Master has followed me.

A. I will answer yes to your question.

Q. And in addition an item denominated, "So much

of the surplus as does not exceed ten per cent of the capital stock," $9,981,650.

A. Yes, sir.

Q. That last item being with specific reference to a deduction allowed by the taxing statutes.

A. That is a question, is it?

Q. Yes.

A. I cannot answer, but I think it is correct.

Q. You recall, do you not, that Section 12 of the Tax Law provides—

The Master: Well, the law speaks for itself. Mr. Howard says he assumes that to be correct. 41198

Q. Did you make any analysis of these figures?

A. These figures which have just been read to me commencing with "Goods, Wares, Merchandise," etc., $1,484,181.01, down to and including "Services portion located on private property," $692,304.61, the analysis that I made of those figures is as follows: I have three columns distributing those items into gas, non-gas, and undistributed. Shall I go on and state?

Q. I would like to have you state that analysis because I want to ask some questions about it.

A. The total of the gas items is $11,535,376.65—

Q. May I interrupt you there just to shorten this? 41199 The gas items comprise goods, merchandise, etc., horses, autos, etc., meters and connections, furniture and fixtures, tools and implements, gas appliances rented, services, portion on private property?

A. Yes, sir.

Q. Those items you assign to gas in your analysis?

A. Yes, sir, I assign those items to gas in my analysis, but of course there are probably some tools and implements, and probably some furniture and fixtures,

various materials and supplies probably to be used in construction.

Q. What did you assign to non-gas?

A. To non-gas have assigned $26,813,773.06, all other notes, bonds, mortgages and debts owing to the corporation.

Q. What did you assign to what you call non-distributive?

A. Cash on hand and on deposit, $722,241.71.

Q. Why did you not assign cash on hand to gas business?

41201 A. I did not have any means of distributing that cash between gas and non-gas.

Q. Did you then in arriving at the proportion figure this item of cash as a non-gas item?

A. I did not figure it.

Q. You did not use it at all?

A. No. You see if you take all of the cash and all of these items which have been classified as gas, of those total items, you will have something less than one-third which are gas, so we took one-third of this Personal Property Tax for 1918 as gas cost personal property tax.

Q. That is to say, the footing of the column
41202 headed "Gas," some eleven million odd dollars, plus the footing of the column headed, "Non-Gas," which contains but the one item of twenty-six million odd dollars, make a sum of which the $11,000,000 is one-third?

A. A little less than one-third.

Q. You took one-third arbitrarily?

A. Yes, sir.

Q. Did you analyze the item of other notes, bonds, mortgages, credits, etc., $26,000,000 odd?

A. No, I made no analysis of that.

Q. Did you not find an analysis of that item at-

tached on a piece of white paper to the first page of this Exhibit 375?

A. Yes, sir. I saw this application prior to the time it was entered as an exhibit.

Q. When did you see it? Have you got the dates of the time you examined that?

Q. It seems to me it must have been a month ago or longer than that.

Q. The reporter's note of the entry on this exhibit is dated November 17, 1919. Have you seen it since then?

A. Oh, yes.

41204

Q. But you did not notice this analysis of the $26,000,000 item on the paper attached to the exhibit, did you?

A. I don't remember it now.

Q. I call your attention to it now. Do you not find here, sundry creditors, $731,247.51?

A. Well, I should have added with regard to this $26,813,773.06 that there probably is an amount, a small percentage that constitutes gas items.

By the Master:

Q. What do you base that on, a small percentage?

A. Consumers' accounts receivable and—

Q. How about loans to affiliated companies, $18,000,000?

41205

A. That is not gas.

Q. All of it? Suppose some of it was to the Standard or to the Astoria?

A. Financing other gas companies is not paying on the respondent's gas business

By Mr. Vilas:

Q. Did you exercise any discretion in making such an assignment, or were you told to assign it in that way?

A. I followed instructions in classifying this $26,813,773.06 of non-gas.

41206 Maxine S. Howard, Cross.

By the Master:

Q. How about sundry debtors, $691,234.00? You say it was a small percentage?

A. Of something over $20,000,000.

Q. The first item, sundry consumers, is $731,247.51 and the next item, sundry debtors is $691,234.00.

A. Suppose you took all the items in there that could be proved as being—

Q. No, I am asking you.

By Mr. Vilas:

Q. Let me ask you about that. Would you say
41207 that sundry debtors, $691,234.00, should be classified as non-gas?

A. I do not think the information on that item would enable one to answer that question.

Q. One could work it up from the books to arrive at a correct conclusion?

A. A person might analyze it from the books.

Q. What about accounts receivable, installments, $28,835.80?

A. I presume that may be gas.

Q. And what about accounts receivable, branches, $153,773.59?

A. That may be gas.

41208 Q. And what about fire insurance participation certificates, $556,498.31?

A. I don't think that would be a gas asset.

Q. Do you not consider that the cost of insuring gas buildings is a gas cost?

A. But this certificate—

Q. Answer the first question.

A. I consider that fire insurance of gas property is a gas cost.

Q. Then is not an insurance certificate that relates to that subject-matter a gas credit?

A. I don't think that these certificates which cer-

tify to their equity in a fund involving the whole system, that such an asset would be called a gas asset.

Q. What about employees' fund investment, $86,926.86?

A. I don't know. I haven't full information about that, but I do not see why that would be called a gas asset.

Q. Accrued interest receivable, $200,917.88?

A. That is probably interest on the investment—

Q. Do you know whether it is or not?

A. I do not know that it is. 41210

Q. You did not investigate to ascertain what the interest was on?

A. No, sir.

The Master: I don't think we are getting anywhere with this. It is quite apparent that there are items in this $26,000,000 that ought to be included in gas cost.

The Witness: That is why we took only one-third; we have allowed something.

Q. Now, Mr. Howard, Federal Corporations Tax, to which you show payment from 1910 to 1913, what do you refer to by that term?

The Master: 1909 to 1913. 41211

A. Yes, 1909 to 1913. That is the tax—I think the title describes it, Federal Corporation Tax.

The Master: That was the Excise Tax on corporations, I take it?

The Witness: Yes, sir.

The Master: Under the 1909 statute?

The Witness: Yes, sir.

Q. Just to hark back a moment to Exhibit 373, after you had made this analysis concerning which I have been asking you, did you deduct from that total, the total of credits not previously accounted for in my

41212 Mayne S. Howard, Cross.

examination, amounting to one item of 28,000,000 odd dollars, and another item of 9,000,000 odd dollars, for the portion of the surplus not exceeding ten per cent?

A. We did not see how those amounts could be distributed between these gas and non-gas personal property assets, so we did not try to—

Q. You did not deduct those items for the purpose of arriving at a balance?

A. We did not deduct those for the purpose of distributing these taxes for the year 1918 between
41213 gas and non-gas.

Q. Although the difference between the two sides would leave about $6,50,000 on the assets side?

A. I have forgotten the amount.

Q. The exhibit shows.

A. I think it is something like that.

Q. But after making this analysis on the assets side, you did not set off against it the unassigned deductions on the other side of the sheet?

A. No, sir.

Q. And you did not make any attempt to analyze those deductions?

A. No, sir.

41214 Q. Nor did you make any attempt after finding the difference between the two, to assign that difference to gas or to non-gas?

A. We did not see how that could be done.

The Master: As I understand it, Mr. Howard, this statement that you base your figures on, having been prepared for the purpose of reducing your tax charge, the levy to be made, the amount to be paid, which claimed the advantage of this ten per cent surplus, and which also claimed as a deduction the $28,000,000 that they owed for other bonds, so that they got their net

amount of taxable personal property to $680,492.67, the tax on that you divided one-third?

Mr. Vilas: No, that was the 1919 tax.

The Master: But on the same basis?

Mr. Vilas: He did not divide it at all.

The Master: But on the same basis.

Mr. Vilas: He never got to that, but after he got this in 1919 he used it to divide the 1918 tax.

The Master: But then you divided the tax assessed against the company one-third to gas and 41216
two-thirds to non-gas?

The Witness: Yes.

The Master: After they had taken advantage of all other deductions?

Mr. Vilas: He never ascertained what tax was assessed on this report.

The Master: But on the same basis.

The Witness: On the basis of these assets in the 1919 application—

The Master: And deductions.

The Witness: And the specific deductions, we distributed the 1918 Personal Property Tax paid between gas and non-gas on the basis of one- 41217
third to gas.

The Master: In other words, you took advantage of all the claimed deductions and gave them no benefit for it when you arrived at an apportionment?

The Witness: I should not say that is so.

The Master: That is what I will say in my opinion.

Mr. Clark: I object. I would like to have him explain what he means.

41218 Mayne S. Howard, Cross.

The Master: It is perfectly clear on the record. I simply disagree with Mr. Howard and Dr. Weber.

Q. You divide the Federal Corporation Tax upon what basis between gas and non-gas?

A. Federal Corporation Tax for the years 1909 to 1912, the figures shown there under gas cost taxes are the figures taken from Teele's schedules supporting Consolidated Gas Exhibit No. 306, for the years 1909 to 1912.

For the year 1913 the total Federal Corporation and
41219 Income Tax paid is shown on Defendants' Exhibit AA-256 as $80,364.04. We took one-sixth of that as being applicable to the Corporation Tax, and the other five-sixths as being applicable to the Income Tax. All of the Income Tax we put down under the non-gas cost taxes. The one-sixth that we considered as being the corporation tax we distributed between the gas cost and the non-gas cost taxes in the ratio of $16,233.63, which is the amount which Teele included for 1912, on the ratio that that figure bears to the $32,586.14 which is the figure shown in our Exhibit AA-256.

Q. Upon whose determination did you divide this
41220 tax one-sixth and five-sixths, assigning five-sixths to the Income Tax?

The Master: The Master states he understands that. The Income Tax Law, so-called, took effect March 1, 1913. There was a difference of calculation from March 1st, which was five-sixths of the year.

Q. Did you do this on your own initiative, or was this all under instructions?

A. This was done in accordance with instructions.

RE-DIRECT EXAMINATION BY MR. CLARK:

Q. Why deduct the amounts which were not specifically deducted on this Exhibit 375 before you divided the 1918 personal tax?

Mr. Vilas: I object to that.

The Master: I will allow it.

Mr. Vilas: Exception.

A. There wasn't any information there which enabled us to tell if those deductions were appliable either to these gas cost or non-gas cost assets.

Q. And in the assets which you assigned to gas cost in your exhibit are there items which probably should be assigned to non-gas cost? 41222

A. There are undoubtedly materials and supplies and things that enter in there which would probably be used for construction, furniture and fixtures—the Consolidated Gas Company owns a great amount of investment, and undoubtedly part of this furniture and fixtures is used by offices—

Mr. Vilas: I object to the speculation of the witness. It is purely speculative.

The Master: I will allow it.

A. (Continued.) Used by offices applicable to this non-gas business, but we assumed that there probably would be in non-gas assets, which we have taken here as $26,800,000, some gas items, and in the gas items some non-gas items. 41223

Q. This was a rough approximation of what you considered the proper division, or what Dr. Weber considered the proper division?

A. Yes, sir, we considered that these figures here were entirely fair to the company as a basis for one-third gas.

Mr. Clark: That is all.

By Mr. Vilas:

Q. The gas item is $11,500,000, and the non-gas item is $26,800,000?

41224 Mayne S. Howard, Re-direct.

A. Yes, sir.

Q. Did you consider that the non-gas items in the $11,000,000 would balance the possible gas items in the $26,000,000—is that your idea?

A. We considered that the amount of non-gas items included in the gas column, and gas items included in the non-gas column, would not be sufficiently important to modify our basis of one-third and two-thirds which we used in distributing the 1918 tax.

Q. But you made no analysis of the $26,000,000 to determine exactly how much of that was gas, and
41225 how much was non-gas?

A. We did not.

(Witness excused.)

Mr. Ransom: I would like to raise the question again whether the defendants are going to produce Mr. Birdsley.

The Master: Yes, he will be here, I understand.

Mr. Clark: I telephoned for him.

The Master: Have somebody telephone again.

Mr. Ransom: I would also call attention to the fact that at the defendants' request Mr. Addicks was directed to be here this morning.

41226 The Master: I am going to hold that back.

Mr. Ransom: He has meetings this afternoon.

The Master: I can't help it, I am going to hold it back until I get through with this. Mr. Addicks can go and attend to his meetings and come back. I am going to get through with Dr. Maltbie and Mr. Weber.

ADNA F. WEBER, recalled.

Mr. Clark: I would like to ask Dr. Weber two or three questions.

The Master: All right, go ahead.

DIRECT-EXAMINATION BY MR. CLARK:

Q. Mr. Weber, when you were on the stand on January 29th, Mr. Goetz asked you to come back to the stand, on page 11,561 of the record, where he said: "I would like when you find that for you to come back to the stand and show me where it is," referring to the company's authorization for a change 41228
in classifications non-operating revenue to operating revenue in the 1913 annual report, page 52, line 42. Have you found the company's authorization for that?

A. I have.

Q. Have you it there?

A. Yes, sir.

Mr. Clark: I offer in evidence so much of the letter from the Consolidated Gas Company to the Public Service Commission as refers to the change in classification bearing on page 52, line 42 of the 1913 annual report.

Mr. Goetz: As I recall it, the question was 41229
as to what authorization there was for making changes in other years, and here is the authorization for the year 1913. What I was asking about was what authorization there was for making the change in these other years for which he made those changes, not about the 1913.

The Master: Let me see the record, Major Clark.

Mr. Goetz: I object to it as incompetent, irrelevant and immaterial, as to that particular issue.

41230 Adna F. Weber, Direct.

The Master: At page 11500 of the printed record appears the following:

"Q. The other gas operating revenue for 1913 of 5.65 cents is arrived at by including in gas operating revenue the item reported by the Consolidated Gas Company for 1913 of $30,489.44 as non-operating income, is that correct? A. Originally reported by the company as non-operating income. I think you will find there is a correction made, authorized somewhere in this correspondence.

"Q. I would like you to point out where the cor-
41231 rection is authorized for the year 1913, for any such figure?

"A. That will take some time to do, but it can be found."

Major Clark now offers in that connection, from the letter of the complainant company to the commission, dated August 29, 1914, and which is applicable to the 1913 report, the statement appearing on page 10 of the letter as follows:

"Page 52, line 42: There should be reported here the rents improperly entered as non-operating revenue on page 60, lines 1 to 10, as the property is
41232 not out of the possession of the respondent.

"A. We have amended our report by transferring to this line $30,489.44 shown in our report on page 60, line 10."

The matter referred to will be received and spread on the record as indicated.

Mr. Goetz: I haven't got the exhibit here to which this relates, and my recollection is it was a question of whether the same thing was done in each year.

Mr. Clark: It does not show in the record.

Q. Dr. Weber, when you were under cross-exam-

ination on Exhibits AA-244 and AA-261, you testified that you had not included in "Gas from Other Sources," "Gas from the Westchester Company"?

A. Yes.

Q. That involved making changes in the figures?

A. Yes.

Q. Can you state what those figures should read with that change?

A. On Exhibit AA-244, line 6:

1909	6,004,083,000
1910	6,312,897,243
1911	6,168,250,970
1912	7,159,666,784
1914	10,744,949,300

41234

Q. What change in these figures results from the change on Defendants' Exhibit AA-261?

A. In line 5, price paid for 1,000 cubic feet of gas purchased:

1909	47.52¢
1910	45.63¢
1911	47.29¢
1912	46.84¢
1914	44.71¢

Q. Now, taking your last exhibit, Dr. Weber, Exhibit AA-465, on what basis have you deducted all of the miscellaneous general expenses other than rewards and supervision of electrical apparatus? 41235

A. On the ground that I could not find that these expenses were definitely chargeable in whole or in part to the cost of making and distributing gas.

Q. The underlying vouchers for a great majority of the items included in this category, with the exception of war emergency service, have been put in evidence in this case, have they not?

A. Yes.

41236 Adna F. Weber, Direct.

Q. And they were examined by your assistants under your direction?

A. That is correct.

Q. And from the examination so conducted it is your conclusion that the vouchers do not show—

Mr. Goetz: I object to that.

Mr. Clark: Let me complete my question.

Q. (Continued) Do not show that these expenses are properly chargeable to gas operation?

Mr. Goetz: I object to that.

The Master: Objection sustained. I do not
41237 want Dr. Weber's conclusion about it. Produce the vouchers and I will say whether they apply.

Mr. Clark: Exception. It is the assumption on which this is drawn.

The Master: I can't help his assumption. I won't take his assumption that a voucher does or does not show something. He has got to show me the vouchers.

Mr. Clark: The vouchers are in evidence.

The Master: All right, you can argue that in summing up. I will rule on it, I don't want Dr. Weber to rule on it.

Q. What is the item shown here for the general
41238 office building—how is it different from the treatment accorded by Mr. Teele?

Mr. Goetz: I object to that on the ground that the question is indefinite and vague.

The Master: Let me see what we are talking about.

Mr. Clark: The last exhibit put in.

The Master: What is your question?

Mr. Clark: What difference is there between Dr. Weber's treatment of the general office building and Mr. Teele's treatment of the revenues?

Mr. Goetz: I object to that on the ground that the question is too vague.

Mr. Clark: I want to explain the basis on which this is made up.

The Master: Where is the figure?

Mr. Clark: It appears down underneath fire insurance participation, expense of operating general office building.

Mr. Goetz: "What is the treatment" is no question calling for an answer as to a fact.

The Master: I will let the witness state how he made up that figure. How did you make up 41240
this figure of $192,187.33? You need not tell me how Mr. Teele made his up.

A. The amount of $192,187.33 is taken from Defendants' Exhibit AA-403 representing the total amount charged to the account, the expense account of operating the general office building; but the same exhibit shows that $64,000 odd had already been included in the operating expense.

The Master: Where?

The Witness: The exhibit shows. It is scattered in various accounts. I can read those from the exhibit.

The Master: Well, I suppose Mr. Goetz is 41241
ready to cross-examine on that very thing.

Mr. Goetz: I am.

The Master: What is the use of going into it? Mr. Goetz will be going into it in a minute.

Mr. Clark: I want to get it before the Master so he will understand the basis on which this is made up.

Mr. Goetz: It is an argumentative statement that shows the basis on which it is made up.

The Master: I will sustain the objection.

Q. Dr. Weber, isn't it true that in this exhibit you have attempted to take in the entire expense of operating the general office building as well as the entire revenue from the general office building, thus making it necessary to consider the office building itself as part of the rate base?

Mr. Goetz: I object to that on the ground in the first place that the question is altogether leading, and in the next place it asks the witness whether he attempted to do something and we are not interested in attempts which may or
41243 may not have been successful.

The Master: I will overrule that objection. You can answer that.

Mr. Goetz: Exception.

A. Yes.

The Master: Next question.

Q. The items of fire insurance participation income, and insurance fund income, are deducted from operating expenses on what assumption?

A. An amount equivalent to those sums on the books has been deducted from the cost of the insurance, on the assumption that there has been charged to expense the gross cost of insurance, and to get
41244 the net cost, any advantage derived from the insurance fund itself should be applied to reduce the gross cost.

Q. Doctor, have you included in this schedule of operating expenses any amount for return on investment at Astoria, or at any of the other plants of the affiliated companies?

A. There would be involved some return on investment in some of the rents paid for tunnels by the Astoria. The other items I have taken out, the larger items.

Q. The other items of return on investment, you have taken out?

A. Yes.

By the Master:

Q. Do you mean you have taken it out—for instance, the Consolidated Gas Company pays the New Amsterdam for gas plus ten per cent, have you taken that ten per cent off?

A. No, I have left ten per cent in, that is another case where there is some return on investment left in there.

Q. Let us understand so I get it clear. In your computation, you have taken as the cost of producing gas by the Consolidated the amount they paid the New Amsterdam exactly? 41246

A. Yes, as to New Amsterdam.

Q. The exact amount paid to Standard?

A. Yes.

Q. And the exact amount—

A. That runs the other way in this year, they received an amount.

Q. Well, the exact amount paid the Mutual?

A. No. There is included in the Teele statement, $75,000 odd for plant facilities which I have not included.

Q. What have you allowed on the Mutual item over and above the actual cost of production? 41247

A. Well, there is nothing except the cost of production plus the ten per cent.

Q. Oh, I see, and you have allowed nothing for investment there?

A. Except as to something that may be included in the ten per cent.

Q. From the Astoria you did not allow anything except the actual cost of producing gas?

41248 Adna F. Weber, Cross.

A. That is true, with the exception of some of the rents. These are included in the Astoria gas rent.

Q. I understand that, but how about taxes?

A. They are included.

Q. In the amount that you allow?

A. Yes, I have used Mr. Sangster's figure, and his figure includes taxes.

Q. Insurance?

A. Insurance.

Q. Repairs?

A. Repairs.

41249 Q. Overhead?

A. Everything except—

Q. Except return on investment, except the seven per cent return on investment?

A. Except the seven per cent and another item which I deducted here of $310,270, representing six per cent upon the Astoria's investment in the Astoria tunnel.

CROSS-EXAMINATION BY MR. GOETZ:

Q. Is that the Astoria's tunnel, or is that the tunnel of the East River Gas Company?

A. I believe—

41250 Mr. O'Brien: Well, your Honor, you used the word "allowed" there. I don't know what view you are taking of it, but there are none of these figures set up in these calculations that are allowed, there is no assent given to the fairness or the reasonableness of any of these items, even where they are included.

The Master: Well, I shall assume, Mr. O'Brien, in view of the attack made on the Astoria figures and their cost of operation and all of the details on which you have gone into it, and that no attack has been made on the New

41251

Amsterdam, the Standard or the Mutual, that you do not seriously oppose those figures.

Mr. O'Brien: We oppose them all.

Mr. Clark: We certainly do.

The Master: I shall take that as indicating that they have not been contested.

Mr. Clark: They have not been proved, that is all.

Mr. O'Brien: We do not have to prove their case.

The Master: No, but you have to prove the unreasonableness of those methods.

Mr. O'Brien: We do not have to, under the rulings of the Courts. 41252

The Master: And if the evidence satisfies me that the cost of producing gas is above what the New Amsterdam and the Standard and the Mutual charge this company, from the other evidence in the case, I shall hold as a fact that those charges were reasonable.

Mr. Goetz: We contend we have shown that.

Mr. O'Brien: Well, you will take your own chances with that.

The Master: No, I won't be taking any chances, I will be deciding the case.

Mr. O'Brien: Oh, yes, but your responsibility is not ended when you decide the case. 41253

The Master: Yes, then I am through.

Mr. Goetz: I object to this interruption.

Mr. O'Brien: Not while you are on terra firma.

The Master: I am through when I have decided this case, then I don't care what happens to it.

Mr. Goetz: There was an unfinished, unanswered question.

Mr. O'Brien: I want to say here that I take exception to any rulings, or the rulings if they

41254 Adna F. Weber, Cross.

be called rulings just made by the Master. We might, if we were to go through categorically with various tabulations of expenditures of the company take up years in trying to do what the complainant is compelled to do under the law, and that is, to sustain the burden of proof, which is not on us, and these intercompany relations call upon the complainant in this case for an unusual amount of evidence, and the burden of proof is on them, especially where they are making bargains with themselves, to justify the con-

41255 tracts.

The Master: It seems to me I have heard that suggestion of the burden of proof before. Go ahead, Mr. Goetz.

Q. Dr. Weber, you referred to the Astoria's tunnel, the interest upon which you have eliminated from the cost of the gas transferred to the Consolidated Company. Is that tunnel owned by the Astoria Light, Heat & Power Company?

A. I did not say Astoria's tunnel; I said Astoria tunnel. I understand that the title is held by the East River Gas Company.

Q. Do you know whether the Astoria Light, Heat

41256 & Power Company or the Consolidated Gas Company have a franchise under which that tunnel could have been constructed?

A. No, I don't know that.

Q. Do you know that the title to any of that property is either in the Astoria Company or the Consolidated Company?

A. I don't know.

Q. Do you mean to imply that the gas transferred from Astoria to the Consolidated mains through this tunnel going to, I think, 132nd Street, may be transferred without the use of that tunnel?

Mr. Clark: I object to that question as incompetent.

The Master: Objection overruled.

Mr. Clark: Exception.

A. I don't know anything about the physical arrangements.

The Master: Well you could not get gas over from Astoria to Manhattan without a tunnel, could you?

The Witness: Not that I know of.

Mr. O'Brien: Yes, if you ask me.

Q. Doctor, is it your statement to the Court that 41258
the rent received by the Consolidated Gas Company from the tenants in the general office building is a revenue derived from the sale of products or merchandise sold by the Consolidated Gas Company?

A. Derived from what?

Q. From the sale of products or merchandise sold by the Consolidated Gas Co.?

A. No.

Q. Is that what you call rental?

A. No, it is more in the nature of service than a product or commodity.

Q. Is that a service rendered by the Consolidated Gas Company in the production and distribution of 41259
gas to its own consumers?

A. No, I should not say that.

Q. I ask you whether this gross rent which the Consolidated Gas Company receives from the tenants in the general office building is regarded by you as revenue derived from a return on property used by the Consolidated Gas Company in the operation of its gas business with its own consumers?

A. That property is used by the gas—

Q. No, I am not asking you that, I am asking you whether you can answer yes or no. Can you say?

A. No, I cannot.

Mr. Clark: I object to the question.

The Master: The witness says he can't answer it.

Q. Doctor, do you know the definition of operating revenue as given by the uniform system of accounts?

A. I would not care to quote it from memory. I have the accounting order here.

Q. When you made up this statement, Exhibit AA-465, did you have the uniform system of ac-
41261 counts for gas corporations before you?

A. Yes.

Q. And did you read in connection with your preparation of this statement the definition of operating revenue given under the uniform system of accounts?

A. I had it in mind.

Q. What is the definition given by the uniform system of accounts?

A. Operating revenues are those derived from the sale of products and merchandise and services rendered and from return on property used by the person or corporation in its own operations.

Q. Now, you have already stated that the gross
41262 rental received by the Consolidated Gas Company from the general office building was neither derived from the sale of products and merchandise or from services rendered to the Consolidated Gas Company's own consumers, and are you still unable to state whether this gross rental is a return on property used by the Consolidated Gas Company in its own operations with its own consumers?

A. I did not say that it was not derived from services rendered; I said it was derived from services rendered.

Q. Through its own consumers?

A. Well, that is not part of the definition. Services rendered.

Q. Well, does the uniform system of accounts contemplate the inclusion in operating revenue, revenue derived from services rendered to others than its own consumers?

A. Of property that is used.

Q. I ask you, can you answer the question?

A. Yes.

Q. It does?

A. Yes. 41264

Q. Is there not also a definition in the uniform system of accounts of non-operating revenue?

A. There is.

Q. And isn't non-operating revenue derived from operations with others than the company's own consumers?

A. Oh, no, that is not the basis of the distinction at all. The basis of the distinction is the use of the property, whether the property is used in gas operations, or whether it is not used in gas operations.

Q. In other words, you would say that the entire general office building is property used in the gas operations of the Consolidated Gas Company with its 41265 own consumers?

A. No, I would not say that it all is. Part of it is.

Q. Which part of it?

A. And that part is not separable.

Q. Which part of it is?

A. Well, according to the testimony there is—

Q. I am not asking you according to the testimony; I am asking you which part of it is?

Mr. Clark: I object to that; he has not been up to that building.

41266

Mr. Goetz: He has not been up to the building, and yet here he has attempted to include in the operating revenue—

The Master: Don't you argue this, Mr. Goetz. If I want any argument I will call for it. Now, what part of the building would you say was used for gas operations, that is, what would you say, that the part which was occupied by them for their offices was used, or the part that they rented out was used?

The Witness: What they rented out would not be used in gas operations, and some portion of

41267 what they used for general offices, general corporate offices, would not be used in gas operations.

Q. You know that the company makes a deduction from the rental received from the tenants of $125,000 and odd, representing the interest upon the rented part of the building, do you not?

A. No.

Q. Or do you not know that Mr. Teele made that deduction in making up his statement of miscellaneous rent revenues?

A. Well, that is different from the company's practice in the books and in the reports.

Q. What is the total amount received by the Con-

41268 solidated Gas Company from tenants?

A. For the year 1918, $308,288.69.

Q. Now, what is comprised in that item to which you have referred in Exhibit AA-403 of $129,128.97, as miscellaneous operating revenue deductions?

A. That is a portion of the operating expenses of the general office building that is charged against the revenue received from the tenants.

Q. What portion of the operating expenses of the general office building is charged to the Consolidated Gas Company?

A. The difference between the $129,000 and the $192,000, and that is $63,068.36. In other words, the sum of the items above the $129,000.

Q. What was the portion of the tax assessed against the G. O. building which was attributable to the portion of the premises rented by the tenants?

A. I shall have to rely upon Mr. Teele's statement as to that.

Q. Well, how much is that, isn't that $35,000?

A. Exhibit No. 205, $35,023.48.

Q. Isn't that $35,690.90, looking at page 8 of Exhibit 205? 41270

The Master: How much?

Mr. Gotez: $35,690.90?

A. Yes, that is correct.

Q. To which Mr. Teele has added interest and taxes of $720.33?

A. Yes.

Q. Now, can you tell me the total of the operating expenses of the G. O. building, and the taxes charged thus attributable to the portion of the building occupied by the tenants?

A. Well, I can add up Mr. Teele's figures for those, if that is what you want.

Q. Yes. 41271

A. I get as the sum of the three items, taxes, interest on taxes, insurance, repairs and other expenses, $165,540.25.

Q. Now, what is the difference between that sum and the amount charged by the Consolidated Gas Company to its tenants for space occupied in the general office building?

A. I make it $142,748.44.

Q. Now, I ask you whether you included in these expenses shown on Exhibit AA-403 for the G. O. building, or in the expenses attributable to the rented

portion of the building, any expense or charge which corresponds with the difference last stated by you, which is included in the rental?

A. Exhibit 403 contains nothing except the expenses. You have been using revenue. There are no revenue items in 403.

Mr. Goetz: Will the stenographer please read that question again.

(The question was read by the stenographer.)

Mr. Clark: You mean whether there is included in Dr. Weber's exhibit?

41273 Mr. Goetz: Whether there is any item of expense shown on any of the exhibits put in by Mr. Howard or by Dr. Weber?

Mr. Clark: That is Mr. Frank's exhibit, if you want to know it.

Q. Or Mr. Frank, or on Exhibit AA-403, which corresponds with this item of $142,000 which was the difference between the rental charged and the expenses of that building attributable to the portion occupied by the tenants?

Mr. Clark: I object to the question as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

41274 Mr. Clark: Exception. He is asking whether it includes revenues in the expense statement.

Mr. Goetz: There is no such question. I asked him whether this revenue corresponds with any expense charge appearing on any of these statements. This revenue was included by the witness in the $308,000, and if there is the revenue included, then there must be some expense against which that revenue is applicable.

Q. Now, is there any expenses against which that revenue of $142,000 is applicable?

A. The expenses have been taken up in arriving at the $142,000. I do not know whether this is an accurate statement of all the expenses of the building or not, it is what the books show to be the expenses of the building.

Q. Well, you have made an analysis of the books, and I ask you to point out what expense there is charged upon the books of the company on account of the premises occupied by the tenants to which the $142,000 is an offset?

A. All of those expenses here have been taken out in reaching that $142,000. 41276

Q. If the expenses have been taken out in reaching the $142,000, then there is no further expenses which the $142,000 can offset, isn't that correct.

A. Well, it is, on the assumption that all of the expenses are in here, yes.

Q. Well, assuming that all of the expenses are in Exhibit AA-403, isn't that correct?

A. Yes, that would be correct.

Q. Do you know that Mr. Frank purported to set forth in Exhibit AA-403 all of the return and expenses shown upon the books of the Consolidated Gas Company on account of the general office building?

A. All included in that account. 41277

Q. What other accounts are there which charge expenses on account of the maintenance of the G. O. building?

A. I do not know, but these expenses are to a considerable extent apportioned expenses, and whether the apportionment is correct or not, we have made no examination at all.

Q. Do you not know that the apportionment is made on the basis of the area occupied by the tenants to the total floor area of the building?

A. That is my understanding.

Q. Now, in answer to Mr. Clark's question a little while ago, you said that in this Exhibit AA-465 you included in the operating expenses all the expense shown upon the books of the company on account of the general office building, and in the revenues you included all the revenues derived by the company, including the rental paid by the tenants of the various portions of the building?

A. Yes.

Q. Are you sure about that, that you included all the expenses?

41279 A. To the best of my knowledge I did.

Q. Did you not on page 2 of Exhibit AA-465 reduce the expenses charged upon the books of the Consolidated Gas Company for the item of general office supplies and expenses by one-third?

A. Yes, that is true.

Q. Do you not know that in this item of general office supplies and expenses there is a charge of $36,000 odd for operating the general office building?

A. Yes, for operating the general office building.

Q. And by reducing the total of $102,215.71 by one-third, have you not also reduced the item included in that total of $36,000 odd for operating general office

41280 building also by one-third?

A. Surely.

Q. And this item of $36,000 odd for operating general office building is included in the company's accounts as an operating expense on account of the general office building, is it not?

A. Yes, I think that is so.

The Master: I would like to ask a question that I did not let Major Clark ask, purely for information. As I understand it, Mr. Teele in preparing his schedules charged all of the expenses

of operating the general office building, and credited all of the rents received, didn't he?

The Witness: No, he did not, he did the opposite. I have done that, and he did the opposite.

The Master: What did he do?

The Witness: He split up both the receipts and expenses, leaving in only a portion of the revenue, and a portion of the expenses.

Mr. Goetz: As this is only for the information of the Master in referring to the record, I would call the Master's attention to this, that what Mr. Teele did was to show in the expenses the portion 41282
of the expenses to the account of the general office building attributable to the tenants, and in the revenues he showed so much of the rent as offset those expenses plus an allowance I think of something like $14,000, and he arrived at that by deducting 6 per cent upon the portion of the investment in the G. O. building which was attributable to the tenants. In other words, we do not include the—

The Master (interrupting): The profits that you made?

Mr. Goetz: This portion of the building in here— 41283

The Master: You exclude the profit?

Mr. Goetz: We exclude the profit. We exclude that portion of the building in what you might call the rate base, and exclude the return on it.

The Master: In substance, what you have done is excluded profit in operating that building?

Mr. Goetz: We have.

Mr. Clark: On a very fancy theory, too.

The Master: I get it.

Mr. Goetz: And what Dr. Weber has done here is to label as miscellaneous operating revenue

41,284 Adna F. Weber, Cross.

the rentals from the rented portion of the building, which includes the profit. According to the uniform system of accounts that is not operating revenue.

Q. Dr. Weber, does the uniform system of accounts contain a title or an account Cost of Manufacture?

A. Title of account, not that I know of.

Mr. Chambers: The system of accounts is the best evidence, isn't it?

Q. That is the title, cost of manufacture, that you use at the opening of this Exhibit AA-462, and is it
41,285 not intended by you to be synonymous with the title of the account in the uniform system of accounts, production expenses?

A. No, it was to distinguish between the gas that is made and gas that is purchased from some other source.

Q. Does not the uniform system of accounts require that there be charged upon the company's books as a part of production expenses the cash purchase price of gas bought from other companies?

A. The production expenses as a group, the combination of account including the account gas from other sources, as you have mentioned.

41,286 Q. I will just ask you, does the uniform system require, or is the company compelled to put upon its books of account an entry representing the cash purchase price of gas bought from other companies?

A. It turns upon the—

Q. (Interrupting.) No, I ask you does it or does it not? If you cannot answer the question, say that you cannot answer it.

A. No, I cannot answer it that way.

Mr. O'Brien: I would object to it anyway.

The Master: And I would sustain the objection.

Q. Dr. Weber, am I perfectly clear in my understanding that you have eliminated from this statement all of the return charged or all of the interest charged by the Astoria Company to the Consolidated Gas Company upon the investment in the price for gas transferred by the Astoria to the Consolidated?

A. No, there are some expenses, I eliminated three large items, I think.

Q. And which are the three?

A. There is a 7 per cent return upon the tax investment, as it appears on the bills, amounting to $1,189,000 odd, and there is a 6 per cent upon the 41288
Astoria investment in the tunnel, the Astoria tunnel belonging to the East River Gas Company of $310,270, only those two items.

Q. Only those two items? I thought you said a third, three items?

A. Well, the third is the New York Mutual, the $75,000 paid to the New York Mutual, but there is still—

The Master: Well, that leaves the Astoria with a charge to the Consolidated on the production of the gas plus taxes and insurance and some other items, but with no allowance for the rent that they paid for the use of the Astoria tunnel 41289
to bring it over.

The Witness: There is some allowance for rent of tunnel. We pay $379,000 for the—

The Master (interrupting): That you eliminated?

The Witness: Not all of that, only the $310,000, not all of the $379,000.

The Master: What does that represent?

The Witness: Well, I assumed that that would cover maintenance and taxes and everything of that sort.

41,800 Adna F. Weber, Cross.

The Master: You have eliminated any return on investment to anybody for the Astoria tunnel?

The Witness: Yes.

The Master: And you have eliminated any return to the Astoria Company for the $15,000,000 that it has invested in the property?

The Witness: Yes, its property.

The Master: Well, then, the Astoria Company is to get no compensation at all for those things that it uses to go into the cost of the making of gas and delivering it over to Manhattan Island, is

41,801 that the idea?

The Witness: Well, I assume it will have a return allowed upon the investment when the investment is proved.

The Master: When what?

The Witness: When the investment is proved. I should assume that the Court would allow a return upon it, but my point simply is that it is not an item of cost.

The Master: What do you mean, it is not an item of cost? Suppose the Astoria Company was an entirely separate and distinct company?

Mr. Clark: But it is not.

41,802 The Master: I say suppose it were? Suppose it were. Would you eliminate that seven per cent on investment?

The Witness: Yes, because the return on investment is usually distinguished, certainly in rate cases distinguished from cost.

The Master: I don't care anything about the rate cases. I am asking a very simple question. The Astoria Company, we will assume for the purpose of my question, is an entirely distinct and separate company making gas for the Consolidated Company. Would you expect the Astoria

Company to make and deliver that gas without getting any return on the capital it has invested in its business?

The Witness: Why, no.

The Master: Isn't that what you are doing here?

Mr. Clark: No, that is not what we are doing here.

The Master: Well, I am asking Dr. Weber.

The Witness: There isn't any return in this cost, that is true.

The Master: Well, where in this whole table is 41294
there any allowance for any such item?

The Witness: There isn't in here.

The Master: Well, haven't I got to add to it?

The Witness: Surely.

The Master: Well, then, this table is not complete?

The Witness: Not on an item of cost, because the Astoria Company is merely another department of the Consolidated Company, another branch.

The Master: That is your theory of it?

The Witness: That is my theory.

The Master: And that is the theory on which 41295
this exhibit has been prepared?

The Witness: Yes.

The Master: And although this shows a profit, as you put it, of 16 cents plus, that is not the net profit delivered to the Consolidated Company, is it?

The Witness: Oh, if you consider the Consolidated absolutely separate from the Astoria, no.

The Master: Well, assuming them together?

The Witness: Assuming them together, it is.

The Master: Then you figure that I have got

to fix my rate upon an investment in addition to that?

The Witness: Yes, precisely.

The Master: But taking it as a separate company, then I have got to add to this as additional cost an allowance to the Astoria Company for other items?

The Witness: It depends on how you use the word "cost." I myself do not think there is much use in paying a return on investment in that case.

The Master: Well, I get your point.

41297 Q. What is the investment in the tunnel which you call the Astoria tunnel, do you know?

A. I can only give you what it is carried on the Astoria's books.

Q. And what is it carried on the Astoria books as?

The Master: The Astoria Tunnel is not carried on the Astoria books.

Mr. Goetz: What is that?

The Master: The Astoria Tunnel is not carried on the Astoria books.

Mr. Goetz: Of course it is not. I want the witness to see what he is going to say he found in the Astoria books, when it is not there, that is all

41298 He is drawing on his imagination.

Mr. Chambers: I object to that.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. Goetz: Take that table Dr. Maltbie put in on investment—

Mr. Clark: Cost is one thing, and return on investment is another.

Mr. O'Brien: Your Honor, they have got to bear the burden of proof of showing the reasonableness of a 12 per cent payment by the Astoria Company on a property, on the use of a part, so

41299

far as it, the Astoria Company, uses it, which was built with their money on which they are getting a six per cent return. Now, the reasonableness of that amount has got to be proven by the complainant, and the Court will inquire searchingly into it, a proposition of a business relation between two companies that are part of one another. If you will be enlightened on that subject, I will refer you to the decision of Mr. Justice Greenbaum in the Matter of The Jamaica Gas Light Company as to agency agreements and the burden of proof.

41300

The Master: I do not have to have Judge Greenbaum's opinion on that subject. I think it is a well-recognized and well-established rule of law that agreements between parties closely related must be closely analyzed.

Mr. Goetz: They have been very carefully analyzed.

The Master: There is nothing new in that proposition.

The Witness: On page 11,768 of the printed minutes, Mr. Sangster gives the amount of the investment of the Astoria Company in the Astoria Tunnel to 1918 at $5,171,166.70

41301

Q. Is that the investment of the East River Gas Company, the total investment of the East River Gas Company in that tunnel, no matter from what source the money for the investment was derived?

Mr. Clark: I object to it as incompetent.

Mr. Chambers: I also object to it as incompetent, irrelevant and immaterial.

The Master: I do not understand the question.

Q. Is that the East River's total investment in the tunnel, or is that the contribution made by the Astoria Company?

41,302 Adna F. Weber, Cross.

Mr. Clark: I object to it as not proper cross-examination.

Mr. Chambers: It will take quite a study to find that out.

Q. Is it, do you know?

A. I don't know.

Mr. Clark: Did you overrule the objections?

The Master: Yes.

Mr. Clark: Exception.

Q. In what form is this $5,171,100.70 carried upon the books of account of the Astoria Company, do you
41,303 know?

Mr. Clark: I object to that as not proper cross-examination.

The Master: I will sustain it.

Mr. Goetz: That relates to this $310,000 which the witness has attempted to exclude upon some theory, and we do not know the basis of it.

Q. Would you regard it as proper accounting for a public utility keeping a system of accounts under the requirements prescribed by the Public Service Commission to reduce its production expenses by the amount of income of another company?

A. It depends on the relationship between the com-
41,304 panies.

Q. Well, I am asking you whether you would regard it under any circumstances?

The Master: I think that is purely argumentative.

Mr. Goetz: Well, this is supposed to be an accounting statement and nothing else, and if it is anything else, there is no basis for it.

The Master: What is?

Mr. Goetz: Exhibit AA-465, and if it is not, it is the work of alchemy.

Mr. Clark: I object to the statement of counsel.

Mr. Chambers: I object to Mr. Goetz arguing with the witness.

The Master: Objection sustained, purely argumentative.

Q. When did you last visit the 14th Street plant?

Mr. Clark: I object to that question as improper.

The Master: How is that material?

Mr. Goetz: Dr. Weber has here attempted to exclude the operating expenses of the 14th Street 41306
plant upon the assumption, as he said, that these expenses might have been offset by the payments made by the Astoria Company to the United War Campaign Fund, and—

Mr. Clark: I object to that statement, there is no such attempt.

Mr. Goetz: And he has allowed here a certain amount as expenses for storage at the 14th Street station. I want to know what the witness knows about the 14th Street station, the expenses of storage, or anything else about it.

Mr. Clark: I object to it.

The Master: The question you have asked is 41307
not the way to get at it. I will sustain the objection. I don't care whether he has ever been there just now.

Q. Have you ever been at the 14th Street plant?

The Master: I sustain that objection. I don't care whether just now, he has ever been there.

Q. Have you ever been at the 42nd Street plant?

Mr. Clark: Same objection.

The Master: Same ruling.

Q. Have you ever made any personal inspection of the 14th and 42nd Street plants?

41308 Adna F. Weber, Cross.

Mr. Clark: I object to that.

The Master: I will allow that.

The Witness: No.

Q. Did any one instruct you to deduct from the production expense of the Consolidated Gas Company the cost of operating the 14th and 42nd Street plants?

A. No.

Q. Did you rely upon any testimony given in this case in deducting the expense of the 14th and 42nd Street plants?

A. Yes.

41309 Q. What particular testimony did you rely on?

A. Mr. Hine and Mr. Little.

Q. Do you know the page references?

A. No.

Q. Or where the testimony occurred?

A. I have not the page references.

The Master: That is not important. You have got the witness's statement that that is how he did it. If I do not agree with him I will just throw it out, that is all.

Q. In your apportionment of the tax assignable to gas operation of $716,964.69, have you included any taxes for any part of the 14th or 42nd Street plants?

41310 A. Mr. Howard, have you got the working papers as to the taxes on 14th and 42nd Street?

The Master: Well, didn't you exclude all taxes on all of the premises that Mr. Hine said he did not think were needed or useful?

The Witness: That was what we endeavored to do.

The Master: That answers the question, and that would include 14th and 42nd Streets, because Mr. Hine did not think the company needed them.

Q. How much tax did you allow for the year 1918 for the portion of the 14th Street plant occupied by the holder station?

Mr. Clark: I object to that, it appears that these figures came from the exhibit.

Mr. Goetz: It does not appear. I want to know.

Mr. Clark: It came from Mr. Howard's exhibit, and if they want to question him about it, all right.

Mr. Goetz: Dr. Weber has attempted to include here some operating expenses of the holder station at 14th Street, and I want to know whether he included any taxes on any part of that site?

The Master: I suppose you object to Mr. How- 41312
ard talking to Mr. Weber, don't you, Mr. O'Brien, while he is under examination.

Mr. Goetz: I join in the objection.

Mr. O'Brien: I think Mr. Goetz will take care of his little foot.

The Master: I simply made the reference that I did to indicate that all of these experts need the assistance of others to point out items in all of these complicated working sheets, and that the same ruling has been applied to all of the experts, I have allowed them to confer with their assistants.

Mr. O'Brien: I will reserve my comments for 41313
some later date.

The Witness: For the year 1918 the tax was included, $10,359.54.

The Master: For what, the holder station 14th Street?

The Witness: Yes.

Q. What did you assume to be the cost which you included here for gas transferred by the Astoria Company to the Consolidated?

Mr. Clark: I object to that as already covered.

A. The cost per thousand?

41314 Adna F. Weber, Cross.

Q. The cost per thousand?

A. 46.55.

Q. Now, is that the cost which the Astoria charged to the Consolidated, excluding the 7 per cent return?

A. No, it is not.

Q. How does that differ from the cost charged by the Astoria to the Consolidated?

A. Well, this is Mr. Sangster's final figure. There are a number of differences, but the principal one is in the item of taxes. Mr. Sangster used taxes paid on real estate and after the valuation had been reduced,
41315 and the books of account were set up on the basis of the tax bills before reduction.

Q. What was the amount actually charged by the Astoria Company to the Consolidated, do you know?

A. Well, I can't find that. Do you mean the total amount or the amount representing gas only?

Q. Well, the total amount and the amount representing—no, the total amount representing gas is what I mean?

A. According to the records it was $4,811,664.53.

Q. Making the cost per thousand cubic feet how much?

A. Well, I don't know.

41316 Mr. Clark: I object to the question.

The Master: What was it?

Mr. Goetz: It says here cost per thousand cubic feet of 46 1/2 cents.

Mr. Clark: He says he took it from Mr. Sangster.

The Witness: I think I can find that in Mr. Sangster's report.

Mr. Clark: There is nothing in the figures to show what was charged.

Q. Wasn't the actual cost as charged by the Astoria

to the Consolidated at the rate of 49.884 cents, excluding interest?

A. 49.884, apparently, according to Mr. Sangster's report.

Q. Does that include anything for the $310,000 charged by the Astoria to the Consolidated Company, representing the interest on the loan by the Astoria to the East River?

Mr. Clark: I object to it as incompetent.

The Master: Overruled.

Mr. Clark: Exception.

A. No, it includes the full amount of the rental paid by the Astoria to the East River, $379,000. 41318

Q. The 49.8 cents includes the interest charge upon this loan from the Astoria to the East River?

A. No, there has been no deduction made of that amount from the gross rental paid.

Q. 49.884 cents charged by the Astoria to the Consolidated, as you understand it, excludes the interest charged by the Astoria to the Consolidated on the Astoria Investment and the interest?

A. Charged by the Astoria to the Consolidated?

Q. Yes.

A. I mean Astoria investment. Oh, on the Astoria investment, exclusive of the tunnel?

Q. Exclusive of the Astoria plant and exclusive of the tunnel, is that correct? 41319

A. No, there is a charge for the tunnel in there.

Q. The 49 cents includes the rent of the tunnel?

A. Yes, includes the rent of the tunnel, three tunnels.

Q. Have you figured out what the charge per thousand is excluding the rents for the tunnel?

A. No, that is a pretty long computation.

Q. Now, the item of $28,392.69 which you have allowed as the storage expense at 14th Street, what

41320 Adna F. Weber, Cross.

have you included for superintendence of the holder station?

A. I made no special allowance for superintendence in there.

The Master: Well, any allowance?

The Witness: No, I should say no allowance.

Q. If the 14th Street manufacturing plant is to be eliminated, would not the Consolidated Gas Company have to have some superintendence and supervision of the holder station?

A. That I don't know.

41321 The Master: No idea?

The Witness: No.

The Master: You don't know whether a holder station needs any supervision?

The Witness: I do not.

Q. In the item of $3,000 which you allow for holder repairs upon some basis of computation, what did you allow for repairs to boiler, engines and exhausters?

A. That item was included in the $3,000.

Q. Well, how much of it?

A. I did not make any separate computation. I took all the repairs and included repairs to boilers and engines.

41322 Q. Can you pick out any particular item, any specific item which is included in this allowance of $3,000?

A. I can give all of them.

Q. Well, what are they, can you give me the amounts for each item?

The Master: Have you made specific amounts, allocating the amounts under each item?

The Witness: No, I did not make allocations.

Q. That is what I want to know, what particular amounts did you allow for each item.

A. I know the items that went into the basis, but I could not make any allocation to represents the $3,000.

The Master: You just guessed $3,000 in a lump for the whole thing?

The Witness: $3,000 in a lump, yes.

Mr. Clark: I except to the Master's use of the word "guess."

The Master: Well, the witness did not except.

Q. Are you sure you made an allowance for the expense of repairing engines, exhausters and boilers of $3,000?

A. Yes.

Q. What items did you include?

A. Works and station structures, furnaces, boilers and accessories, steam engines, holders, miscellaneous equipment, all of the items entering into the repair accounts as shown in Exhibit AA-130. 41324

Q. But you are unable to now give any specific items for any particular amount?

A. No.

Recess.

Afternoon session.

ADNA F. WEBER resumed: 41325

CROSS-EXAMINATION BY MR. GOETZ:

Q. Upon what basis, Dr. Weber, did you eliminate from the operating expenses the amount paid by the Consolidated Gas Company to the New York Mutual Gas Light Company in 1918 for reserve capacity provided by the Mutual for the Consolidated Gas Company?

A. Because I regarded that as return upon investment rather than cost.

Q. Upon whose investment?

A. Upon the investment of the New York Mutual Gas Light Company.

Q. The return paid by the Consolidated Gas Company to the New York Mutual Gas Light Company upon the latter's investment?

A. Yes.

Q. In plant capacity?

A. Yes.

Q. Have you attempted to eliminate from other operating expenses paid by the Consolidated Gas Company to its creditors the return on the investments of
41327 the creditors included in the bills rendered by those creditors to the Consolidated?

Mr. Clark: I object to that question.

The Master: Objection sustained.

Q. Or are there any other cases in this schedule, Exhibit AA-405, in which you have excluded from the payments made by the Consolidated Company the return upon the investment of the creditors to whom those payments were made?

The Master: Other than you have already testified, Dr. Weber.

A. No, I have not covered them all. Three payments.

41328 The Master: Yes, we have had those.

Mr. Goetz: Not quite fully.

The Master: Fully enough. Do not argue with the witness.

Mr. Goetz: No, I will not.

The Master: What you have said is purely argumentative.

Mr. Clark: What Judge Hughes calls tabulated argument.

Mr. Goetz: His entire table is nothing but an argument.

The Master: Then that is all I will take it as. I am taking it very much in the nature of Mr. Teele's statement showing his theory of the cost based upon certain records, and Dr. Weber has presented something that he thinks represents the views of the Public Service Commission as to how it ought to be figured.

Mr. Goetz: The tabulation of these various things in the various exhibits, his exclusion from one exhibit and inclusion from another, is of no use.

The Master: I understand it. That is the reason I am limiting the cross, because you get nowhere by getting into an argument with the witness. 41330

Mr. Goetz: I suppose I am entitled to point out those figures and show the basis on which he got the figures.

The Master: Yes, that is what I want you to do, and I will draw my conclusions.

Mr. Goetz: Then that is all I will do.

The Master: I could see from what the witness already said that he did not do that on a bill for coal, for instance, or a bill for brick. He draws a distinction between the New York Mutual and the New Amsterdam and the Astoria and others. He draws a distinction between them and the other creditors. He takes the theory they are part of the Consolidated. That is his theory; I do not know how far I will follow it. 41331

Q. Dr. Weber, did you find charged upon the books of the Consolidated Gas Company the items of general and miscellaneous expense which you have eliminated from the expense portion of your exhibit?

A. Yes.

41332 Adna F. Weber, Cross.

Q. Have you the details of the miscellaneous general expenses which you have excluded from this exhibit?

A. I think so.

Q. Perhaps I can summarize that.

The Master: No, let him give it to you. He has that here.

A. You will find them all in Mr. Steele's Exhibit 205, page 28, under the group of items called Miscellaneous General Expenses.

Q. Shown on ledger folio 1031 for the year 1918?

41333 A. Yes.

Q. Amounting to $194,446.83?

A. Yes.

Q. Upon what theory did you exclude from the operating expenses the item of $32,000 for notary's fees?

A. That had not been shown to be a necessary expense in the production and distribution of gas.

Q. Do you not know that the Consolidated Gas Company is obliged to make sworn reports to the Public Service Commission and the State authorities and the Federal authorities, for which it must employ a notary?

41334 A. I do know that they do make certain sworn reports. Whether it has to pay the notary anything is another question.

By the Master:

Q. You expect notaries to do their work for nothing, do you?

A. That is the way it is done in the houses down near us. Every large house has a notary among its own employees.

Mr. Clark: They do it in our office.

Q. Well, that would be some expense, would it not?

A. I do not see any expense.

Q. You have to pay the notary's fee for filing his certificate, in any event, have you not?

A. Yes, I suppose so.

Q. You have excluded that much, anyhow, have you not?

A. Yes, that is true.

Mr. Clark: Five dollars.

The Master: I think it is $15 now. It is a good many years since I acted as notary. It used to be $10.

Mr. Goetz: It is $15.

The Master: Anyway, that is excluded. Now, proceed. 41336

By Mr. Goetz:

Q. Can you not conceive of other occasions when the Consolidated Gas Company must have the services of a Notary Public than in making the annual reports?

Mr. Clark: I object to it.

The Master: I sustain that as fully covered.

Mr. O'Brien: The City used to do it some years ago, before they got efficient and economical.

Mr. Goetz: It never got to that stage.

Q. Upon what basis did you exclude the item of $31,250 which was a contribution to the United War Work Campaign? 41337

Mr. Clark: Mr. Teele excluded that himself. I object to the question.

The Master: I will take the witness's answer.

Mr. Goetz: If the witness had agreed with Mr. Teele or followed his—

The Master: Why did you strike out the War Work Campaign Fund?

The Witness: Because I regarded donations as not cost items.

Q. Do you mean to say that the Consolidated Gas Company could manufacture and distribute gas without making donations? Is that your theory?

A. Yes.

Mr. Clark: I object to the question.

The Master: It is already answered.

Q. Did you assume that the directors of the Consolidated Gas Company, who receive no salary, should not even receive any director's fees for attending meetings?

A. No, I do not assume that.

41339 Q. On what basis did you exclude the item for meeting fees of $13,941.12?

A. Because it is only partly chargeable to gas operations.

By the Master:

Q. So you excluded it all?

A. If any part of it is chargeable to gas operations I think the company should prove it.

Q. So you excluded it all?

A. Yes.

By Mr. Goetz:

Q. Anything the company has not proved to your satisfaction as an operating expense you have ex-

41340 cluded; is that the idea?

Mr. O'Brien: I object to that.

The Master: No, I will let him say that. I am willing to let him say. You excluded every item that you did not think was proved?

A. No, I would not say that generally, but in this group here, in this particular group.

The Master: I am going to take Mr. Teele's statement, item by item, next week, and I am going to ask each one of you gentlemen representing the defendants what your claims are, what they are based on, and what you think I ought to do with the particular items.

Mr. Chambers: That is pleasant.

Mr. Clark: Is that next week?

The Master: Yes.

Mr. Clark: You must have talked Mr. Ransom into leaving out 1919.

Q. Have you any reason to doubt that the expenditure of $100,251.89 for defensive emergency service was not incurred in the year 1919?

A. Was not what?

Q. Was not incurred?

The Master: Answer that.

Mr. Clark: I object to that. 41342

The Master: That is the last question I am going to allow you to ask with reference to this group of items Dr. Weber has excluded from his tabulations on the theory he did not think they ought to be in. These items you have touched upon here as to directors' fees, defensive emergency service and war relief I will dispose of; you need not argue with the witness about it.

Mr. Goetz: I am simply trying to get the witness's reason for the exclusion.

The Master: I do not care anything about his reason. These items he has excluded he did not think ought to be in the cost of production and 41343
he has excluded them from his computations. Have I correctly stated your attitude, Dr. Weber?

The Witness: Yes, sir.

Mr. Goetz: I have to ask leave to depart from the Master's ruling to this extent: I want to ask the witness what he understood or what he knows was comprised in the item of $27,280.85 for "Miscellaneous," which is included in the account Miscellaneous General Expenses.

The Master: I will let you ask that. I will let you ask any questions that will identify items and explain them.

Mr. Goetz: I do not care for the figures making up the amount, but I want the items which enter into this miscellaneous charge.

The Master: $27,280.85?

Mr. Goetz: Yes.

The Witness: There is a great variety of items.

The Master: Let us have some of them.

The Witness: I have $2,089, for example, for services registering stock from January 1, 1917, to 1918.

41345 Q. Have you got an item for Revenue Stamps, U. S. Revenue Stamps?

A. Yes, $477 for U. S. Revenue Stamps.

Q. Have you an item for Rental of Bank Vault?

A. I will come to that in a minute. I do not see it just this minute.

Q. Auditing Books of Account?

Mr. Clark: I object.

A. It will take time to go through these. Here are a couple of hundred vouchers.

Q. Perhaps you can tell from your general recollection whether this classification does not broadly comprehend all of them.

41346 Mr. Clark: I think the witness ought to be allowed to answer the question.

Mr. Goetz: The witness has said it would take him a long time.

Mr. Clark: Suppose it does. I did not ask the question; you asked it and you should let him answer it.

Mr. Goetz: I do not want the witness to take a long time; it will keep us here longer than I want to stay.

Mr. Clark: Then you should not ask it.

A. Nearly every month there is a considerable disbursement to E. J. Kenney for services. He was an employee, I understand, of the New York Edison Company, and his work was similar to that charged for in the Defensive Emergency Service—similar to that. That appears nearly every month of the year.

Mr. Clark: What amount?

The Witness: Well, it runs in various amounts. In December it was $1,309.80, in November it was $761.58.

Mr. Goetz: I have not asked the witness to give me the details of these expenditures. 41348

The Master: No, but Maj. Clark asked for it, and I am letting him answer it.

Mr. Goetz: I want the general purposes.

The Witness: I can read off the larger items. It would take time for me to find any particular one that you mention.

The Master: Do that, read off the larger items.

The Witness: Did I give the first one, Eleven Annual Membership Dues, $50, in the Merchants Association of New York, total $550?

United Electric Light & Power Company $384.10. The voucher is not produced for that.

Postage for Annual Reports and Dividend Notices, $635. 41349

8,000 copies of Annual Report—I think I read that—$675.25.

Services and Disbursements of E. J. Kenney and assistants in January, $727.91.

In February, the same, $803.

Among the April charges, Kenney again, $788.15.

Shearman & Sterling for Sundry Disbursements, in various amounts and proceedings, including West 44th Street condemnation matters, $934.78.

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In that month of July, services and disbursements, Kenney, $844.07, and the second item of $760.

In August, 1,000 tickets for Police Field Day, $1,000, and 250 tickets, same thing, $250.

J. W. Lieb, contribution toward year's expense of National Committee on Public Utilities, $2,000.

Services and disbursements E. J. Kenney, $838.05.

In October, Kenney, another voucher, $774.62.

41351 Mercantile Safe Deposit Company, annual payment for use of safe, $300. That was the item you asked about.

Q. Yes.

A. $300.

Q. Do you find an item for Auditing Books of Account?

The Master: Well, he has not reached it yet.

Mr. Clark: Wait a minute.

A. December, Kenney, $933.29.

Expenses of Boy Scout Movement, $516.65.

Another voucher for New York Edison Company for expenses of Mr. Kenney, $1,309.80. I think I

41352 read that.

Charles S. McCullough, examining books 1917 and making report, $1,200.

I think I read all of the items of $500 or over that are in the account.

The Master: Next question.

Q. You excluded each and every one of those items for your operating expense calculation?

The Master: The question is not allowed as already covered.

Q. Do you know upon what questions of law the

counsel for the Consolidated Gas Company rendered opinions to the Consolidated Gas Company in 1918?

Mr. Clark: I object to the question.

A. No, I do not.

Q. Upon what basis did you reduce the legal expenses of the Consolidated Gas Company to which the bills of Shearman & Sterling refer?

A. The voucher did not show the nature of the services.

Q. Why did you deduct a third instead of a half?

A. The basis of that deduction was this, that these General Expenses of the General Office and General 41354
Officers are corporate expenses applying to all the activities of the corporation both in making and distributing gas, and as a holding corporation and as a real estate company.

The Master: How much did he allow?

Mr. Goetz: $42,000, and he took off a third.

The Witness: I can find nothing on the pay rolls or the vouchers to indicate the amount of time devoted specifically to the gas business, and I thought that if the matter was to be brought to the attention of the Master there should be some suggestion or basis of an apportionment, either on the basis of the assets or on the basis of the 41355
earnings. It seemed to me, on the whole, the basis of earnings was the more reasonable basis for making an apportionment of these general expenses.

Q. You said on the basis of earnings?

A. Yes.

Q. What figures did you take in making the apportionment?

A. I used approximately Mr. Teele's Schedule 14A of Exhibit 205, which shows a ratio of 33 odd per cent for nongas. I took that at one-third.

Mr. O'Brien: I may say here, your Honor, that my contention will be that that whole item should go out.

Mr. Chambers: That is mine, too.

Mr. Goetz: I object to these interruptions by counsel for defendants.

The Master: I told you I would ask you for your contentions when the proof was all in.

Q. What income did you apportion to gas and what did you apportion to nongas?

A. Well, as I said, I made no apportionment. I
41357 followed Mr. Teele's Exhibit 14-A. It is all in there.

Q. In other words, you took the $15,000,000 for gas income and $7,000,000 for nongas income?

A. Yes. The figures are $15,694,772.

Q. Yes. What expense did you attribute in the legal expenses of the Consolidated Company to the fact that the Consolidated Gas Company received dividend checks from other companies?

A. There is no special allocation; it is simply a general allocation.

Q. Did you attempt to appraise the value of counsel in connection with that operation of the company's general business?

41358 A. No, I did not.

Mr. Clark: I object to the question. I think it is sufficiently explained, as to what he did.

Q. Was there any service of counsel required in receiving the dividends from the other companies?

Mr. Clark: I object to the question.

The Master: Read that question.

(The question was read by the stenographer.)

Mr. Chambers: I object as incompetent, irrelevant and immaterial.

The Master: I will sustain the objection.

Mr. Chambers: The burden is on the complain-

ant of showing what these services are for, and on the defendants.

Mr. Goetz: The witness has attempted to deduct one-third from the bill of counsel, upon the basis of this table by Mr. Teele, Schedule 14A, and the $7,759,000 shown as not applicable to the gas business on this schedule, as comprised of the items bond income, interest on loans, dividends received, miscellaneous rent revenues, insurance participation received, joint gas rent revenue, interest on New York City corporate stock, interest on Liberty Bonds— 41360

The Master: What do you want to do, argue the question out with Dr. Weber?

Mr. Goetz: I want to know to what extent he attributes the expense of counsel in the company's receipt of these moneys.

The Master: Objection sustained.

Mr. Chambers: That burden is on the complainant and we stand here challenging all of their disbursements.

Mr. Ransom: We will challenge all of yours pretty soon.

Q. Upon the same basis as you have outlined for your reduction of the bills of counsel, did you reduce 41361
the charges made in the operating expenses of the company for general office and general office supplies and expenses?

A. Yes, salaries general office and general office supplies and expense account.

The Master: Then, as I understand it, Dr. Weber, with reference to the items such as legal expenses, the salary of Mr. Cortelyou and other officers, you figured, taking 14A of Mr. Teele's Exhibit 205, that as the receipts not applicable to the gas business as therein enumerated were ap-

41362 Adna F. Weber, Cross.

proximately one-third of the $23,000,000 received from all sources, those expenses ought to be apportioned in that same ratio?

The Witness: That is correct.

Q. Did you not find from the examinations which have been made by your assistants and through the books of account of the Consolidated Gas Company that the company changes to the affiliated companies the salaries of any employees engaged upon the work of the affiliated companies, to the extent that their work is a part of the work for which they are gen-
41363 erally employed?

Mr. Clark: I object to the question.

The Master: The question is allowed.

Mr. Chambers: I object to it as argumentative.

The Master: Objection overruled.

Mr. Clark: Exception.

A. I shall have to say no, because your question is so broad as to cover every question in the case.

The Master: What question are you referring to now, Mr. Goetz?

Mr. Goetz: I am referring to this very item of general office expense, including the expense of a
41364 number of employees other than general officers.

The Witness: There are charges against other companies.

By the Master:

Q. You have just taken a third of the 334, is that the idea, or two-thirds of the 334? You have allowed two-thirds of 334 on Salaries General Officers: is that the idea?

A. There is a deduction of $149,000.

Q. A deduction of a third?

A. A deduction of a third. That is the way it is treated.

Q. So you have deducted a third of the pay roll item?

A. Yes.

Q. A third of the Chemical Department and a third of the Cashier's Department, and all of these other items?

A. Yes.

Q. What has the Cashier's Department got to do with the other companies so that you took off a third of that?

A. It does not necessarily have to do with the other companies, but it is— 41366

Q. Oh, you take it on that 14A basis, on the theory that they are doing some work not applicable to the gas business?

A. Not applicable to the gas business. It is as a holding corporation.

By Mr. Goetz:

Q. Did you know that each company has its own accounting department?

The Master: That is argumentative: let us get the truth.

Mr. Goetz: I want to know what the witness took into account?

Mr. Chambers: They have not proved it. 41367

The Master: I do not care what he did or did not take into account: the question is what I will or will not take into account or what the reviewing Court will.

Mr. Chambers: It is a question as to what the fact is and then what should be taken into account.

Mr. O'Brien: Or what Father Time will do with this case with a big scythe.

Q. You have also deducted a third from the item $102,215.71 for general officers and expenses?

A. Yes.

41368 Adna F. Weber, Cross

Q. Take, for instance, the item of stationery, amounting to $9,724, included in these expenses, can you say how much of that stationery was used for purposes other than those of the Consolidated Gas Company and its consumers?

Mr. Clark: I object to that.

The Master: Objection sustained; it is not useful cross-examination.

Q. Upon what basis did you deduct one-third from the expenses incurred by the Consolidated Gas Company in 1918 for stationery?

41369 Mr. Clark: I object to the question.

Mr. Chambers: Same objection.

The Master: Same ruling.

Q. What knowledge have you of the use of the stationery by the Consolidated Gas Company in 1918?

Mr. Clark: Same objection.

The Master: Same ruling.

Mr. Goetz: I take exception to all these rulings.

The Master: What are you going to do with it?

Mr. Goetz: I hope to do nothing with it. I assume that your Honor will exclude every ques-

41370 tion that I may ask with regard to the basis of the reduction by the witness of each and every item included in the operating expenses of the Consolidated Gas Company under the caption of "General Office Supplies and Expenses."

Mr. Chambers: I am going to object to his excluding it; you may ask a good question and we want it answered.

The Master: The Master is not going to answer the question.

Mr. Chambers: Even though the Master rules it out, if he asks one that is proper we won't ob-

ject to it. We want an answer to it, but if he asks an improper question we will object.

Mr. Goetz: You do not want an answer to anything.

Mr. Chambers: Yes, we do.

Q. On what basis did you deduct from the expenses $3,823.85 incurred by the Consolidated Gas Company in 1918 for the laboratory?

Mr. Clark: I object.

Mr. O'Brien: The lavatory?

Mr. Goetz: The laboratory.

Mr. Chambers: Do you ask him how did he apportion it, or what facts he had before him, which, Mr. Goetz? 41372

The Master: You can answer that.

Mr. Clark: Exception.

A. That was included in the general apportionment.

Q. Is that the only basis that you had for reducing the laboratory expense in 1918?

A. It was.

Q. Do you not know that every item of work done by the laboratory for some other company or corporation or person is charged for by the Consolidated Gas Company?

Mr. Chambers: I object to that as incompetent. 41373

The Master: I will sustain the objection.

Q. Upon what basis did you reduce the expense for the Photographic Department of the Consolidated Gas Company?

The Master: Objection sustained. It is already covered by the witness's answer that it was all reduced on the basis of 14-A.

Mr. Goetz: 14-A?

The Master: Of the Teele exhibit—Schedule 14-A of the Teele exhibit. The pay roll depart-

ment the same thing, and sundry repairing the same thing, in that group (indicating).

The Witness: Yes.

Q. Upon what basis did you reduce the amount paid by the Consolidated Gas Company for towel service for its own officers in 1918?

Mr. Clark: I object to the question.

The Master: Objection sustained. Where is the towel item anyhow? I do not see it.

Mr. Goetz: It is not in detail there, but it is part of the miscellaneous.

41375 The Master: Then my ruling applies to it.

Mr. O'Brien: It will take more than one of those towels to bring in equity with clean hands, your Honor.

Mr. Goetz: No, I do not think it will take more than one.

Q. Dr. Weber, do you know what amount was paid by the Astoria Light, Heat & Power Company to the East River Company of Long Island City in 1918 for the use of the Astoria tunnel?

A. According to what Mr. Sangster reports it from the books.

The Master: What do you ask him?

41376 Mr. Goetz: I asked the witness whether he knew what amount was paid by the Astoria Company to the East River Company in 1918 for the Astoria tunnel—for the use of the tunnel.

Mr. Clark: I object to that.

Mr. Chambers: I object.

Mr. Goetz: It has not been covered, and the witness confuses the record by this statement of the facts.

Mr. Clark: I object to the statement of Mr. Goetz.

Mr. Goetz: I will show it by the record.

The Master: Overruled.

Mr. Clark: I except to the ruling.

Mr. Chambers: I object to that and I take exception.

The Witness: According to Mr. Sangster's statement No. 1, page 11747 of the printed record, the amount paid in the year 1918 for the use of the Astoria tunnel to the East River Gas Company was $379,190.73.

Q. Do you know what items were comprised in that charge?

A. No, I do not. I do not recall them, no. 41378

Q. How much of that was interest on investment in the Astoria tunnel?

A. I do not know.

Q. Have you any idea at all whether it is $150,000 or $310,000?

Mr. Chambers: I object to that as incompetent. That is a question for the complainant to answer. The burden of that is on the complainant and they have to sustain it.

Mr. Goetz: The defendants show $310,000, and I shall show that there is no basis or foundation in fact for it.

The Master: I will allow it. Do you know 41379
whether it is $350,000 or $310,000?

The Witness: No, I do not.

Q. Do you know how much was included in the $379,000 for taxes paid upon the Astoria tunnel?

A. No, I do not.

Q. Or for renewals and repairs?

A. No.

Q. Do you know whether the East River Company charged the Astoria Company for the full use of the tunnel—or for the use of the entire tunnel or only part of it?

A. I think for only a portion of it.

Q. How much, do you know?

A. No, I do not know.

Q. Approximately?

A. I do not know.

Q. Is it fifty-seven per cent?

A. I do not know.

Q. Would that refresh your recollection?

The Master: The witness says he does not know.

A. I do not recall.

41381 Q. Is it your testimony that the $310,000 which you have deducted from the operating expenses of the Consolidated Gas Company in your Exhibit AA-465 is the amount paid by the Astoria Company to the East River Company as interest on investment?

A. No, I do—paid by the which company?

Q. By the Astoria Company to the East River Company as interest on investment.

A. No, I do not know anything about the items of this rent payment.

Q. Was it $310,000 paid by the Astoria Company to the East River Company as a part of the

41382 total charge for the use of the tunnel?

A. I do not know.

By the Master:

Q. That is what you call it, less interest on investment in the Astoria tunnel, do you not?

A. Yes, that is what the Astoria receives from the East River Gas Company as interest upon the investment.

Q. That is what the Astoria receives?

A. The Astoria receives.

Q. From the East River Company?

A. Yes.

Q. As interest on investment?

A. On the Astoria investment.

The Master: And you say that is not so?

Mr. Goetz: I say it is not so? Of course I say it is not so.

By Mr. Goetz:

Q. Do you not know that the Astoria Company made a loan to the East River Gas Company of over $5,000,000, for which the East River Gas Company issued its obligation to the Astoria?

A. There is such a loan, such an obligation. I do not remember the form of the obligation. 41384

By the Master:

Q. Is this $310,000 the interest on that?

A. It is.

Q. What connection then has that with this item of amount to be paid for the gas and the use of the tunnel?

A. Any return upon investment in my view should be excluded from the cost.

By Mr. Goetz:

Q. Investment by whom?

A. Either the Consolidated Gas Company, or the Astoria Company, which is a part of the Consolidated. 41385

The Master: See if I understand the fact, Mr. Goetz, before we waste any more time on it. The Astoria Company loaned $5,000,000 to the East River Company; is that right?

Mr. Goetz: Yes.

The Master: On that the East River Company pays the Astoria Company interest; is that correct?

Mr. Goetz: Correct.

The Master: This item of $310,000 is that interest?

Mr. Goetz: Correct.

The Master: Is that correct?

Mr. Goetz: That is correct.

Mr. O'Brien: At six per cent?

The Master: The Astoria then pays the East River Company rent for the tunnel?

Mr. Goetz: It does, for a part.

The Master: For a part of the tunnel?

Mr. Goetz: Yes.

The Master: That is rent affecting the tunnel use?

41387 Mr. Goetz: Correct.

The Master: That rent for the tunnel use is included in the cost of production of the Astoria Company?

Mr. Goetz: It is, upon the books of the Astoria Company.

The Master: Yes, and what Dr. Weber has done is to charge against that rental the $310,000 that the Astoria gets from the East River as interest on its investment; isn't that the idea?

The Witness: Yes, that is it.

The Master: Then do not spend any more time on it; it is perfectly clear.

41388 Q. The Astoria Company never got any stock from the East River, did it?

Mr. Clark: I object to the question.

The Master: I will sustain the objection. I do not care anything about that.

Mr. Goetz: That is all.

The Master: Is that all for Dr. Weber?

Mr. Goetz: Yes.

The Master: Any re-direct?

Mr. Clark: Yes.

RE-DIRECT EXAMINATION BY MR. CLARK:

Q. Dr. Weber, this item of storage expenses on the first page of this exhibit, do you understand that that includes any items of labor or pay for engineers?

A. Yes. Yes, it does.

Q. And when you state that you do not know whether there would be any additional superintendence charges if this were a separate holder station, what did you mean by that?

Mr. Goetz: I will object to that.

The Master: I will allow it as proper re-direct. 41390

Mr. Goetz: Exception.

A. I do not know whether this would need superintendence in addition to what they have already there or not. It is a question of physical operation, and I am not familiar with that operation.

Mr. Clark: That is all.

The Master: Now, Mr. Birdsley.

Mr. Chambers: Mr. Maltbie is still waiting.

The Master: I know, but Mr. Birdsley is a public officer and I am going to let him go first. Mr. Maltbie is under pay and I will take Mr. Birdsley first.

Mr. Chambers: Exception. 41391

Mr. O'Brien: I object to his being recalled.

The Master: The objection is noted, it is overruled, and exception allowed.

Mr. Chambers: Is he recalled for cross?

The Master: Further cross continued on these test sheets that were put in evidence and have been checked up.

Mr. Chambers: They were not his sheets, that is the trouble.

41392 William Birdsley, Cross.

WILLIAM BIRDSLEY, resumed.

CROSS-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Mr. Birdsley, are these test sheets which you have produced here the original papers from which the inspector makes or is supposed to make his first notation of his observed candle power during the ten minute or nine and a half minute intervals?

A. They are not in all cases, it is my recollection.

Q. That is, in many cases the testers or inspectors

41393 make notations on some other papers?

A. Possibly on a piece of scratch paper, and then copy them onto the test sheet.

Q. And then they copy it or you think they copy it onto the test sheets?

A. Yes, sir.

Mr. Chambers: I object to it.

The Witness: In some cases, not all cases.

Q. Well, in many cases?

A. Well, that I could not say.

Q. Do you know whether the computations of corrected illuminating power, as they call it, are made before or after notations made on scratch paper have

41394 been copied onto the test sheets?

A. That I could not say.

Q. Of these test sheets how many copies are made by the inspectors, one or two, if you know?

A. From 1917 I think we have been making two copies; that is, one original, and with a piece of carbon paper underneath, which produced a duplicate.

Q. That is, these are gotten out in pads?

A. In pads; yes, sir.

Q. And when an inspector or tester makes his notations he makes them in duplicate by putting a carbon sheet in between the first and the second sheet?

A. He does.

Q. What is done with each of those copies, if you know?

The Master: The carbon copies.

Mr. Ransom: Yes, the original and the carbon.

A. The carbon copies are sent to the Public Service Commission.

Q. Have you produced here any of the original sheets on which notations were first made by the testers or inspectors?

The Master: You mean these scratch sheets? 41396

Mr. Ransom: Or whatever he may call them.

A. No, sir; nothing except the sheet known as the test sheet.

Q. You are clear that from the beginning of 1917 down, though, this method has been followed, of making carbon copies in the manner which you have described?

A. I am not positive as to the exact date. I believe it was around 1917 we started giving copies to the Public Service Commission.

Q. Certainly during 1918 and 1919?

A. Yes, I am quite sure of that.

Mr. O'Brien: Well, it was while Mr. Ransom 41397
was with the Public Service Commission?

The Master: Do not answer that.

Mr. Ransom: And while Mr. O'Brien was with the Tenement House Department.

Mr. O'Brien: You are treading on dangerous ground there, Mr. Ransom.

Q. How do you account for this kind of a situation? I show you tests made, or purported tests, at the end of December, December 30, 1919, by Mr. Hirschewitz at 79th Street. Would you say those could be the original test sheets (handing witness)?

41398 William Birdsley, Cross.

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial. The question does not indicate what this paper of Mr. Hirschewitz is; the question does not make it plain whether it is a paper that has been offered in evidence.

The Master: We will have it plain in a minute.

A. From the sheets that I have in my hand, the appearance of the writing and the figures, they appear to have been made with a lead pencil, and consequently it is not a carbon copy.

41399 The Master: No, what Judge Ransom means is, are those the original Hirschewitz—

Mr. Ransom: Or are those something subsequently copied?

The Master (continuing): —test sheets for December 31, 1919, December 30, 1919, and December 29, 1919?

The Witness: Well, I could not say. It may be that he did not have any carbon paper and he made two copies in lead pencil.

Q. I call your attention to the fact that two of them are still attached together by mucilage, or whatever makes up that binding of the pad.

41400 Mr. O'Brien: What boots that? I do not see what that is for. Are these papers that have been offered in evidence?

The Master: Yes, they are part of the exhibit.

A. I do not quite understand the question, Mr. Ransom.

Q. What I am trying to develop is whether those are copies made subsequently, at some later time, or some other time, from the sheets made by Mr. Hirschewitz, or whether they are the original sheets?

41401

The Master: Let us get this record straight. From Judge Ransom's inquiry it would appear that his contention is that these sheets, three sheets of December 29th, 30th and 31st, were still in the condition in which they would be if the three sheets had been torn off of the pad at the same time, with the binding material at the edge holding them together.

The Witness: They are not together, as I see.

Mr. O'Brien: They are put together with a clasp.

The Master: When you look at them two of the three sheets appear to be held together to a 41402
very slight degree, so slight that as the witness handled them they fell apart. It is impossible to say from their appearance when produced by Mr. Ransom and handed to the witness that they were in the condition suggested by Mr. Ransom's question. It may be that Mr. Ransom by other proof can show that was their condition. Assuming that to be so, would you say those are the original sheets as they were offered in evidence?

The Witness: Yes, they appear to be the original sheets.

The Master: All right. So that, if Judge Ran- 41403
som can show they were fastened together in the manner described, it will be a matter for me to take under consideration.

Mr. O'Brien: Will the Master please indicate on the record that the three pieces of paper just handed to this witness are held together by a clasp?

The Master: By a clip, yes.

Mr. Ransom: And they were held together by the mucilage.

Mr. O'Brien: Not to my eyes—and I do not wear glasses, Mr. Ransom.

41404 William Birdsley, Cross.

The Master: I have made a complete record on it so there will be no question.

Q. I show you a sheet of Sol Frank's test, December 17th, 79th Street, and call your attention to the entire lack of a barometer reading. Would it be possible to compute corrected illuminating power from that sheet (handing witness)?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: It assumes something that is merely a description of the attorney.

41405

The Master: The objection is overruled.

By the Master:

Q. Would it be possible to make the computation without the barometer reading?

A. No.

Q. The barometer reading is not on there?

A. He may have had it on the scratch pad or taken it from one of the other sheets and not copied it down on that.

By Mr. Ransom:

Q. I call your attention to the test sheets of Robert Wacker's Grand Street examination?

41406

The Master: Of what dates?

Mr. Ransom: The test sheet is marked "9-10-17, 2.55," and the sworn report is marked "July 10, 1917."

The Master: There are three papers here; you did not describe the other one. There is a test sheet 9-16-17 and July 10, 1917, the Wacker reports. What is your question?

Q. And I also show you the report made by Sidney Straus for Grand Street on 9-10-17, namely, September 10th, 1917, for this same gas.

Mr. O'Brien: You handed the witness here one that has got July 10th, 1917, on it.

Mr. Ransom: Yes.

Q. I ask you whether the test sheet which I have shown you by Mr. Wacker correctly states the date of his test according to his sworn report?

Mr. Chambers: I think you ought to ask the man who did it.

Mr. Ransom: This is the man who takes these things and checks them up in the office.

The Witness: No, I do not check them up.

The Master: Well, you are in charge of the 41408
office.

The Witness: The report sheet marked July 10—

The Master: Of Wacker.

The Witness: Of Wacker.

The Master: 1917.

The Witness: 1917, showing the candle power of 21.54 at 2:55 P. M., and a test sheet which I have here showing a candle power of 21.54 at 2:55 P. M., appear to agree. The date does not agree with the report sheets.

Q. And it appears by the other sworn report that the test on 9-10-17 of this gas— 41409

The Master: September 10th, 1917, was made by Sidney Straus.

Mr. O'Brien: That does not get us anywhere, your Honor.

Mr. Clark: That is where the man put the 9 down for a 7.

The Master: The last question of mine was unanswered.

The Witness: I did not hear the question.

The Master: The sworn report for September 10th, 1917, is made by Sidney Straus?

41410 William Birdsley, Cross.

The Witness: It was.

Mr. O'Brien: And the sworn report for July 10th is by Mr. Wacker.

Mr. Ransom: You cannot prove violations by that improper method.

Mr. Clark: I object to cross-examination of Mr. Birdsley on matters done by other people.

The Master: Objection overruled.

Mr. Clark: I take an exception.

Q. I show you test sheet for 79th Street, January 19th, 1917, and Hirschewitz's sworn report for the
41411 same date, 79th Street, Consolidated Gas, Branch 3, and ask you whether Mr. Hirschewitz correctly stated in his sworn report which you have made up in the tabulation the corrected illuminating power according to his test sheet (handing witness)?

Mr. Clark: There was no tabulation in that year.

The Master: Objection overruled.

Mr. Chambers: I object. I think Mr. Hirschewitz should be asked about it himself.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. The candle power here seems to have been trans-
41412 posed, as near as I make out.

Q. The sworn statement shows 22.90 and the test sheet 22.10; is that correct?

A. That is correct.

Mr. O'Brien: And the company is favored.

Q. I show you Hirschewitz's 79th Street report, December 12th, 1916, and ask you whether Mr. Hirschewitz correctly reported or transcribed to the sworn reports which you have tabulated the purported time of his test (handing witness)?

Mr. Chambers: I object on the ground that

Mr. Hirschewitz should be asked about his own papers.

The Master: Overruled. I will allow this as cross-examination of Mr. Birdsley, who is the head of that department.

Mr. O'Brien: But, your Honor, as a matter of time-saving—you have been so anxious to save time that you kept us going from 9:30 until 6, and on one night last week from 8 to 10, and on public holidays. I think the proper thing to do would be to send for the witnesses and have them cross-examined. 41414

The Master: I noticed I was not the only court that worked yesterday, either.

Mr. O'Brien: You are thinking now of Wickersham's plight. I know how your mind operates.

The Master: I know that Surrogate Cohalan was working yesterday with a jury.

Mr. Chambers: That might have been by consent of all parties.

A. The time as shown on the test sheets for New Amsterdam on December 12th, 1916, and shown on the test sheets on the same day do not agree.

Q. I call your attention to the Sydney Straus report, the sworn report under date of June 3rd, 1916. I call your attention to the tests for illuminating power at the Grand Street station June 3rd, 1916, which you have produced, the test sheet of David H. Schweistog. 41415

Mr. Clark: I object to that. His test sheet is not in evidence; he was not called as a witness.

Mr. Ransom: Yes, you offered it in evidence.

Mr. Clark: It was not offered in evidence.

Mr. Ransom: You offered it.

The Master: Well, it will be. Is that the test sheet filed in your department?

The Witness: Yes, sir.

The Master: By Mr. Schweistog?

The Witness: It is.

The Master: That will be marked in evidence. This test sheet June 3rd, 1916, Grand Street station, New Amsterdam, will be part of the exhibit for the 1916 test sheets of the Grand Street station, having that same number.

Mr. Chambers: May I record my objection to the Master's offering it in evidence?

The Master: Yes.

41417 Mr. Chambers: Exception.

The Master: The date given on this test sheet is June 3rd, 1916, "June" being written out, 11.30 A. M. The sworn report is June 3rd, 1916, sworn to on the 10th of June, 1916, by Sydney Straus. New Amsterdam is given as maximum pressure on service main in inches 4.10 in the sworn report and 4.10 in the test sheets. Minimum in inches 3.60 in the test sheet and 3.45 in the sworn report. On the sworn report 3.60 appears opposite Branch to Consolidated in minimum inches. The time of the test is given as 11.30, which corresponds with the time of the test given on the

41418 test sheet. The corrected illuminating power on the sworn report is given as 21.38. I take it on the test sheet it is given as 23.47, the observed illuminating power being 22.76. Those are the only points I can check it up on. The hour is precisely the same, 11.30 on June 3rd, and the maximum pressure is precisely the same, 4.10.

Mr. Chambers: They may have been taken together there.

Mr. Clark: They probably have the wrong date on it.

Mr. Ransom: Here is another one produced under this bulk offer that they made.

The Master: This Schweistog test was not offered in evidence. Only those that were sworn to were offered. It is only fair in this connection to say that there appears before the Master a report of Schweistog, dated June 30, 1916, in which he states that the New Amsterdam gas was 23.47, maximum pressure 4.10, minimum 3.00, at 11:30 A. M. Where is the Sydney Straus test sheet for June 3rd?

Mr. Ransom: I do not know where that one is. 41420

The Master: It would seem as if Schweistog had made a mistake in writing out the date June 3rd instead of June 30th.

The Master: He neglected to put a naught on it.

Mr. Ransom: Or Straus did, one or the other.

The Master: No.

Mr Clark: I make application to have marked, as part of the exhibits already in, all of the test sheets of Mr. Schweistog.

The Master: No, I only offered that Schweistog as a complainant's exhibit.

By Mr. Ransom: 41421

Q. I call your attention to a purported test sheet and purported sworn report of Mr. Hirschewitz, 79th Street, December 18, 1919, and ask you whether the correct candle power or illuminating power reached by the computations on the test sheets was correctly set forth in the sworn report (handing witness)?

A. The test sheet for the date mentioned does not agree with the report sheet.

The Master: Pick out two or three more and that is all I will take.

Q. Well, the same thing, 79th Street, March 1st

41422 William Birdsley, Cross.

of 1919. Does the candle power computed on the test sheet—was that reported on the sworn report?

Mr. Clark: I object to all these questions addressed to Mr. Birdsley, on the ground that he is not the proper witness to testify to them.

The Master: Overruled.

Mr. Clark: Exception.

A. There is a difference of two one-hundredths of a candle power.

Q. I show you the February 6, 1919, 79th Street station test sheet, barometer 58 inches. Could any
41423 such reading, if made, give any such result as is there shown?

A. No, it appears to me the temperature was copied over in the barometer column.

Q. Is there any barometer figure there?

A. The logarithmic figure is down there, yes, representative of the barometer on that day.

Q. And no barometric figure?

A. No, the logarithm is there.

Q. There is no way of testing whether the barometric log had been correctly taken?

A. Well, the logarithm there represents the barometer.

41424 The Master: No, but how can anybody know whether he took a logarithm?

The Witness: I see. From that particular sheet you would not know.

Q. Just take this case; here is one right here (handing witness). Can you tell whether you could get any such corrected candle power as is there shown using the logarithms which are there given?

A. I would have to calculate it.

Q. You can do that in a moment. I am directing your attention simply to the log.

The Master: Take his log.

Mr. Ransom: Taking the logs that are there given.

The Master: Pick out three more; I am going to limit it to that.

Mr. Clark: I object to the Master's suggestion that he will allow any more, or that he has got any more there.

The Master: What is the answer? Can you get such a result with that log?

The Witness: With that logarithm, no. The logarithm is right, I would say.

Q. What? 41426

A. The logarithm down at the bottom is representative of the candle power shown.

Q. Do you mean the final log?

A. The final log.

Q. But the log given for candle power and barometer and temperature, if those were added up, would not give you a basis for the candle power reported?

A. It would not.

Mr. Ransom: These were put in evidence the other day five tests made at Grand Street and 79th Street stations by this witness Birdsley on September 25th, 1919, and we find no sworn report of it. 41427

Mr. Clark: I object to the statement of counsel.

The Master: That is all right.

Mr. Ransom: Unless there are sworn reports I will move to strike these out.

The Master: No, I will take his testimony.

Mr. Ransom: I call on the defendants to produce any sworn reports, if there are any.

The Master: Grand Street and 79th Street, the same day, September 25th, 1919, Mr. Birdsley.

Q. I call your attention to the Hillig test sheets,

Grand Street, September 19th, 1918, the notation candle consumption time of burning 40 grains 7.72, and ask you, if you assume that to be a correct statement of the rate of consuming 40 grains, whether you could get any such candle power as is shown on that sheet (handing witness)?

A. That figure should be 9.72.

Q. That is, you think it should be?

A. Yes, the logarithm indicates that.

Q. So you infer it should be 9.72. I show you the Wacker test October 1st, 1918, 79th Street, candle
41429 consumption time of burning 40 grains 9.14 minutes, or a rate of burning in excess of 30 candles. Would not a candle burning at that rate smoke and give a very incorrect test?

The Master: Wouldn't that smoke?

A. Yes, that would.

The Master: That would be pretty bad, would it?

The Witness: That would favor the Gas Company pretty good.

Q. Do you resolve these things into questions of whether they favor the company or attack the company; is that the phraseology that runs through your
41430 mind?

A. Not in the least, but certain conditions will tend to affect the gas one way or another.

Q. You do not mean that your men do things to hurt the company or favor the company, do you?

A. Absolutely. I consider them very unbiased.

Q. Then why do you always talk of these things in terms of whether they hurt the company or favor the company?

Mr. Clark: I object to that question.

A. Because the question is put in a way to appear that I was testifying in a way to hurt the company.

Q. I call your attention to 79th Street, July 30th, Hirschewitz, and ask you whether he correctly reported the candle power on his sworn reports, assuming that he correctly computed it on his work sheet (handing sheet)?

A. The report sheet shows 18.35 and the test sheet shows 18.30.

Q. I show you 79th Street, March 8, 1918, and ask you whether any computation could be made that would be reliable without showing either the candle consumption time of burning 40 grains and the candle consumption equivalent and grains per hour, or the 41432
temperature of the gas, all of those being missing from that sheet (handing witness)?

A. This is a carbon copy.

By the Master:

Q. What difference does it make? It could not be on the original if it did not go through the carbon?

A. The idea is that sometimes a man will take his carbon out or tear the sheet off, his two sheets off, and take his carbon out before he has completed his tabulations there, or put in some other figures.

Q. The first thing to put in is the time of burning candle consumption?

A. When the test is finished. 41433

The Master: Don't you think you have had enough of that?

Mr. Ransom: I have a lot of others here.

Mr. Clark: I object to that statement.

Mr. Ransom: I will make it very short, and I suggest this: Our men have not completed their work by any means, but I have here 354 different tests, representing as many days out of the period, put in evidence by the defendants, which according to the computations made by the defendants' own tables are incorrect.

41434 Mr. Clark: I object to the statement of Judge Ransom unsworn.

Mr. Ransom: I would like to turn these over to Mr. Birdsley. I have made a tabulation of them by years, with parallel columns showing the candle power certified by the City and a blank column for putting in a correct candle power. I would like to ask the witness if he or some one in his department will look these over and see if they find any one of these 354 that in their judgment has been correctly computed according to their own tables, assuming that the eyesight was accu-
41435 rate in the first instance and the things were correctly computed, or correctly set down on the test sheets—were correctly computed from the data put down.

The Master: Well, do it that way. Have you got copies of these tabulations?

Mr. Ransom: Of these notations here?

The Master: Yes.

Mr. Ransom: Yes.

The Master: So that there is no harm in giving those to Mr. Birdsley.

Mr. Ransom: No.

The Master: This will be the record: Mr.
41436 Ransom will hand these 354 reports over to Mr. Birdsley; Mr. Ransom in his rebuttal will put a witness on the stand to swear to these 354 computations, and if Mr. Birdsley finds anything that he can meet he can come back on rebuttal.

Mr. Ransom: The difficulty with that, as we found the other day, is that these inspectors figure one way and Mr. Birdsley on the stand figures differently, and in some instances they figured two different ways. Some of the figures that Mr. Birdsley gave were the figures that I had worked out or were worked out through my men.

1437

The Master: What has that got to do with it? You put a witness on the stand and he simply says that he has examined 354 reports and he found they vary in the following respects; and then have a table prepared and I will take it right in. In the meantime Mr. Birdsley has a copy to check, and no time will be wasted. If in any one instance the figures given by Judge Ransom do not work out, Mr. Birdsley can come in and very quickly meet it by his testimony. It ought not to take ten minutes.

Mr. Ransom: I am taking over 60 during the part of 1919 covered, 229 during 1918, 22 during 1438
the part of 1917 so far covered, and 43 during the part of 1916.

The Master: I won't take any more on that, Judge Ransom. I think whatever you have here will support your ideas.

Mr. Ransom: I think so. I do not intend to offer anything further. Some of those I selected out under the Master's ruling (handing Mr. Clark).

Mr. Clark: These are the ones you interrogated about?

Mr. Ransom: I interrogated on a few of those that you have in your hand, but they are not a 1439
part of the 354 which Mr. Birdsley has in his hand.

Mr. Clark: I would like to go over these and call Mr. Birdsley back if there is anything to explain. I do not know that there will be

The Master: Very well.

41440 Milo R. Maltbie, Cross.

MILO R. MALTBIE resumed:

CROSS-EXAMINATION BY MR. RANSOM:

The Master: Mr. Maltbie, if you will just answer the questions directly as far as possible, we will get through quickly.

Mr. Chambers: I would like to have him answer, whether directly or not.

The Master: I want the answer yes or no so far as possible.

Q. Dr. Maltbie, have you ever calculated just how
41441 much property of gas corporations you appraised in rate cases while you were a Public Service Commissioner?

A. Have I what?

Q. Have you ever calculated just how much property of gas corporations you appraised in rate cases during the period of your service as a Public Service Commissioner?

A. I don't think I have.

Q. Well, there was the Brooklyn Borough Gas Company, whose property you assigned a total value of $1,320,000 to?

A. I don't recall the figure.

41442 Q. Approximately that?

A. Well, it is somewhere in that neighborhood.

Q. A company selling approximately 273,353 M cubic feet of gas a year?

A. I do not carry the figures in my head.

Q. Well, that was approximately it, was it not?

A. What year?

Q. The year when you appraised it, if you recall.

A. I do not recall.

Q. There was the Kings County Lighting Company, to whose property you assigned a value of $2,480,000; do you recall that?

A. Well, it was somewhere in that neighborhood.

Mr. Chambers: I object to his putting those figures in.

The Master: Objection overruled.

Mr. Chambers: Let him ask him what amount.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. A company selling at that time 580,728 M cubic feet of gas a year?

A. I do not recall the figure.

Q. Have you no idea at all about it?

A. What was the figure you gave? 41444

Q. 580,728 M cubic feet?

A. Well, my recollection is it was more; but I would not say that it was.

Q. Is it your recollection that their actual sales were more or that you estimated a higher figure for the future in the Kings County Lighting case?

A. Well, the figure was more. I do not recall it.

Q. The figure you gave, in your opinion, you would say was more?

A. It is already a matter of record in opinions on file with the Commission.

Q. And the Queens Borough Gas & Electric Company, to whose property you assigned a value of 41445
$860,000?

A. I do not recall the figure.

Mr. Chambers: I object to that on the ground it is a matter of record.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. You have not any recollection as to what the approximate amount was?

A. I think it was somewhere in that neighborhood, but I do not recall it.

Q. A company selling 177,200 M cubic feet a year?

Mr. Chambers: I object to that, putting the figure in—it is confusing.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. I do not recall the figure.

Q. Aside from these three companies, were there any other gas corporations whose property you appraised in rate cases while you were a Public Service Commissioner?

A. I don't think there were any other cases in which a final figure was made; an approximate figure was
41447 made in the Bronx Gas Company's case.

Q. Was that a rate case?

A. That was a capitalization case.

Q. I am asking you about rate cases.

A. There was, I think, an approximate figure made, although not completed, in the Newtown Gas case, and also in the Jamaica, Richmond Hill and Woodhaven case.

Q. Those were cases in which you had no part in the decision?

A. Those cases, the last three cases, were decided after I left the Commission.

Q. How long after you left the Commission were
41448 those cases decided?

A. Well, Col. Hayward could tell you better than I can.

Q. Upwards of a year, was it not?

A. I don't know.

Q. Do you recognize these as the bound reports of the decisions of yourself and others as Public Service Commissioners (handing witness)?

A. They look very much like it.

Q. I call your attention to page 669.

Mr. Chambers: What year?

Q. (Continued.) Of Volume II, setting forth your

report or opinion in the Kings County Lighting Company case.

Mr. Chambers: What year is that book?

Mr. Ransom: This covers the period September 1, 1909, to December 31, 1911.

Q. I ask you whether the figures of gas sold by the Kings County Lighting Company are not there given as 580,728 M in 1910 (handing witness)?

Mr. Chambers: I object as being immaterial and incompetent.

A. That is the figure as there given.

Mr. Chambers: I wish you would try out the Kings County Lighting case. 41450

Q. I call your attention to page 695 of the same report, the first paragraph of the subdivision headed "Fair Value of Property," and ask you if you did not give there the value of the property as $2,480,000, or certainly not more than $2,500,000?

Mr. Chambers: I object to that as incompetent.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. On December 31, 1910, those figures you give, yes.

Q. That was the value as of the time which was fixed for the purposes of determination made by you? 41451

A. Well, there are other values given for other dates in another part of the report.

Q. For estimated values for future years?

A. Some of them for future years and some of them for past years.

The Master: Let me see that estimated value for future years.

Q. That is, you estimated the increases in plant and property?

A. That would be needed to supply the estimated sales.

41452 Milo R. Maltbie, Cross.

Q. The estimated increase in sales which you likewise conjectured about?

A. Yes, and as I recall it was understated.

Q. By the way, this opinion in the Kings County Lighting case or this order was subsequently reversed by the court, was it not?

Mr. Chambers: By which court?

Mr. Ransom: Appellate Division and the Court of Appeals.

Mr. Chambers: Not the whole opinion, that is not correct.

41453 Mr. Ransom: I did not say the opinion, the order.

Mr. Chambers: It is not correct anyway.

The Witness: That is not correct.

Mr. Chambers: Show him the Appellate Division and the Court of Appeals.

The Master: I suppose you are asking this as bearing upon the witness's qualification and experience to appraise properties?

Mr. Ransom: Yes.

The Master: I think you have covered enough of it. What difference does it make whether it is 2,480,000, or 2,262,000?

41454 Mr. Ransom: He has made the statement here that he has appraised 125,000,000 of property.

The Master: Well, it is only three or four million. That is near enough.

The Witness: I made a statement that I had appraised $125,000,000 of property for all utilities.

The Master: Well, the Gas Companies apparently were about $4,000,000. What is the difference whether it is a few dollars more or less.

Mr. Chambers: The statement Mr. Ransom

made was not accurate, at least it didn't sound so.

Q. I will show you the Court's opinion in a few minutes.

A. I just want to get it straight. There was a later opinion than that one from which appeal was taken.

Q. I show you page 346 of Volume IV of the reports and decisions, which purports to set forth your opinion in the Brooklyn Borough case, 31st Ward of Brooklyn, and ask you whether it does not appear from that page that the fair value of the property upon which you held the company was entitled to a fair 41456
return at that time was $1,320,000, and that the cubic feet of gas sold for 1912 was 273,253 M cubic feet?

A. You have given the fair value, $1,320,000, for 1913. The figures you give for sales are for 1912.

Q. This was a decision filed by you on July 8, 1913.

A. I presume you are right; it was somewhere about that time.

Q. The order was made on that date?

The Master: Well, let us get ahead.

Mr. Chambers: It was made when it appears it was made, whatever date it is.

Q. Now, I call your attention to page 345 of this opinion, the allowance which you made for working 41457
capital in that case was $60,000, was it not?

Mr. Chambers: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. The allowance was for $60,000 of the appraisal of $1,300,000, in round figures.

Q. And the operating expense of the company as shown by page 347 of this opinion, for the year 1912, was $123,571.89, and taxes, $14,931.65, were they not?

41458 Milo R. Maltbie, Cross.

Mr. Chambers: I object to that. Mr. Maltbie has not testified as to Operating Expenses nor Taxes. It is not proper cross-examination.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. The figure of $123,571.89, shown on page 347 of the Opinions, Public Service Commission, Volume IV, is for the year 1912, and covers Total Operating Expense, Excluding Amortization.

Q. And taxes are how much?

A. Taxes for the same year, same page, same vol-

41459 ume, $14,931.65.

Q. I call your attention to page 576 of Volume II, purporting to set forth your opinion in the Matter of the Queens Borough Gas & Electric Company. That shows $800,000 as the amount which you said the Queens Borough Company was entitled to earn a fair return upon as to its gas properties, did you not?

The Master: What does this bear on?

Mr. Ransom: It bears on working capital and it bears on the witness's qualifications.

Mr. Chambers: I object to it.

The Master: I will take it as bearing upon working capital if it is claimed to be inconsistent

41460 with what Maltbie has said.

Mr. Ransom: Very inconsistent.

Mr. Chambers: It is not inconsistent.

A. This is the amount given upon page 576 for the gas part of that company's business.

Q. By the way, in the Queens Borough Gas case in 1911 you computed that they should have an 8% rate of return, did you not?

A. I do not recall all those figures.

The Master: You don't recall what rate of return you calculated Gas Companies were entitled to?

The Witness: Not in every one of these cases.

The Master: Didn't it range from 7 1/2 to 8%?

The Witness: I think from 7 to 8%.

Q. I call your attention to the page you have before you, of the Queens Borough opinion—isn't that 8%?

The Master: I was going to call attention to that myself, and call attention to the fact that that represents 10% on dividend returns.

Mr. Chambers: He has not testified in this case about dividend return, has he?

Mr. Ransom: Surely. 41462

Mr. Chambers: The Master knows he has not. Why do you say "surely"? He has not given a word of testimony on the rate of return in the Consolidated Gas Company case.

Mr. Ransom: Indirectly he has.

Mr. Chambers: Not indirectly or otherwise.

A. I think I should read the sentence, as he has referred to it. It is: "After considering all factors the Commission has concluded that, in view of the circumstances surrounding this company and the character of the area within which it operates, a fair rate of return on both gas and electric undertakings for the purpose of the present case would not exceed 8 per cent." That 41463
was 1911, Mr. Maltbie?

A. I think it was, I won't be sure.

Mr. Chambers: All this about the rate of return is over my objection, on the ground that it is not proper cross-examination. I just want the benefit of it so as I can bring out some matters on rate of return.

Q. I call your attention to page 581 of this opinion in the Queensboro case, and ask you if you did not there show for 1911 operating expenses, including taxes, $70,890, plus $53,160, making a total of $124,050?

Mr. Chambers: I object to that as not helpful and not proper cross-examination.

The Master: What has that relation to, working capital?

Mr. Ransom: Yes.

The Master: What do you say this is inconsistent with, what statement the witness has made?

Mr. Ransom: In connection with his working capital proposition.

The Master: What did he say about working capital?

41465 Mr. Ransom: He has allowed about seven cents per thousand or a little less in this case, and in this other case he has allowed a figure up where it should be, around 17 to 20 cents.

The Witness: You can't blindly fix a figure of so many cents a thousand sold without knowing the conditions under which each company operates.

The Master: Let us have an answer to the question. I have the point of the inquiry.

A. The two figures added together would cover the operating expenses including taxes but exclud-

41466 ing depreciation.

Q. And the total number of cubic feet of gas was 177,200 M as less as shown on the same page?

A. Yes, sir.

Mr. Chambers: You recall that our proposition is that on working capital each case is to be decided on its own merits.

The Master: I thought I heard Mr. Maltbie just say that?

Mr. Chambers: He did say that. How is that inconsistent?

The Master: I don't know, but Mr. Maltbie explained his attitude.

Mr. Chambers: Well, he did before.

The Master: I know he did, that is what I am calling your attention to.

Mr. Chambers: You have to study each case, that is true.

The Master: But I am going to let Judge Ransom develop his point that Mr. Maltbie, as Public Service Commissioner, allowed from 17 to 25 per cent.

Mr. Ransom: In this case he allowed 24 per 41468
cent of annual operating expenses and taxes for working capital.

Q. Your allowance in this Queensboro case for working capital was $30,000, was it not?

A. I do not recall the figures.

Q. I will show it to you. I call your attention to page 566, this statement: "In this case the amount considered reasonable for working capital is $30,000 for the gas department"?

A. That is the amount, I was looking for the year that is covered, but I do not quickly turn to it.

Q. In the case of the Kings County Lighting Company for 1910, as shown on page 609 of your opinion 41469
in that case, the total operating expenses were $307,557.81, and the taxes were $58,336.68, making a total of $345,000, plus, was it not?

A. $307,557.81, that is correct. That includes in that case amortization. $38,336.68, that is correct for 1910 taxes.

Q. And your total valuation of property as of December 31, 1910, including all factors which you said should be included, and deducting all factors which you said should be deducted, was, $2,477,579, was it not?

The Master: What case is that?

Mr. Ransom: Kings County Lighting.

Mr. Chambers: I object to that as incompetent.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. That is correct as of December 31, 1910.

Q. And your allowance for working capital as shown by that same page as to that company, was $80,000, was it not?

A. That is correct.

41471 Q. Now, when you say that you valued or appraised physical property of gas companies as a Public Service Commissioner, you do not mean that you personally inventoried the property or made the engineering valuation yourself?

A. I mean that I did not inventory the property.

Q. Did you mean that you made the engineering valuation yourself?

A. I don't know what you call it. I made a valuation of the property.

Q. Do you consider yourself an engineer?

A. I do not.

Q. What you did was to listen to the testimony of
41472 engineering experts and Mr. Hine and reach a conclusion from their testimony?

A. I listened to the testimony of engineering experts, including Mr. Hine.

Q. And then reached a conclusion from their testimony?

A. That was not all. I did not reach a conclusion merely from listening to the testimony.

Q. Did you base your conclusions upon anything which was not testimony?

A. To some extent. You have to have a little common sense in all these things, you know.

Mr. Chambers: Does the Master subscribe to that?

The Master: I think it is a pretty good thing to have around loose when you are deciding a case.

Q. Now, is it not a fact that the requirements of working capital are common to all gas companies in respect to the purchase of coal, gas oil, and other materials and supplies?

A. There are certain requirements that are found in nearly every company, but they vary.

Q. Those are coal and gas oil, and gas making materials and supplies, and the like? 41474

A. Every company has to have materials to make gas with.

Q. Likewise, with respect to the rendering of bills for gas supplied, residuals sold, and for other work done for consumers there are common requirements essential?

A. I did not say common requirements; I say there are requirements.

Q. All gas companies have them, have they not?

A. Not all gas companies have them.

Q. Are there any gas companies that do not have bills for gas supplied?

A. No; that is not the question you asked. 41475

Q. Is there any gas company that you know of that does not have bills for residuals?

A. The cost of residuals is covered in the cost of making gas, in the operating expenses.

Q. And gas companies likewise have common requirements in respect to employment of labor?

A. Not common requirements. They have requirements in respect to the employment of labor.

The Master: I don't quite get your distinction. They all have to hire labor?

The Witness: That is exactly it.

The Master: That is common to all?

The Witness: Yes, sir.

Mr. Chambers: That was not his question.

Q. As far as labor, purchase of coal and gas oil and purchase of materials and supplies are concerned and in respect to the rendering of bills, and the like are not differences in these conditions as affecting various gas companies comparatively unsubstantial?

A. No.

Q. On December 19, 1916, did you appear before
41477 the Special Committee of the Council of the City of Minneapolis called the Special Committee on Readjustment of Gas Rates, and did you there submit orally your report to the committee?

A. What date was that?

Q. December 19, 1918?

A. It was about that date.

Q. Do you remember making the following statement to the committee, pages 30 and 31 of the stenographer's minutes: "Now, we come to working capital, which includes supplies and stores, and a reasonable amount of cash on hand to pay bills when they come in. It is probable that a company should
41478 have a fairly good working capital in order to take the discount on bills, if those discounts amount to more than six per cent, and if you didn't have a sufficient amount of working capital you could not take the discount off your supplies, and your operating expenses would be much more. So, it is economy and wisdom to have a fair amount of working capital in order to enable the company to buy its supplies at a lower figure and keep its operating expenses down"?

A. I don't recall the exact words, but I suppose that is substantially correct as you read it. It is substantially correct.

Q. Did you also make the following statement to the Special Committee, page 31, of the stenographer's minutes: "My estimate for the full amount of working capital, which I think is generous to the company, is $450,000"?

A. I allowed that in that case. Do you want to know something more about it?

Q. Did you also make the following statement, stenographer's minutes, page 31: "That gives us the figures for what I consider the fair value of the property of the Minneapolis Gas Company, used and useful, as of July 1, 1918, $5,935,695"? 41480

A. I think that is it. I do not recall the exact figure, but that is approximately correct.

Q. And the 1918 sales of the company were approximately 2,500,000 M cubic feet?

A. For what year?

Q. 1918, and estimated by you for 1919 to be 2,900,000 M cubic feet?

A. I remember the last figure of 2,900,000. I don't recall the figure for 1918. I remember the estimate for 1919, which was exceeded by only 50,000. I came that close to it.

Q. Do you recall that the 1918 figure was approximately 2,500,000 M cubic feet? 41481

A. No, I don't recall that figure. I was under the impression it was somewhat more, but I don't recall the figure.

Q. In the case of the Municipal Gas Company of Albany did you not testify to what you regarded as a reasonable amount of working capital for the company for 1918, in the City of Albany as $105,000, shown by stenographer's minutes of that trial, page 3747?

A. I testified in that case, and I think it was about that figure. I will not be positive.

Q. And the value of the physical property of that company testified to was $1,161,260, as shown by the stenographer's minutes, page 3199, to which you added overheads of $34,000, stenographer's minutes, page 3747, making a total value of $1,195,260, as testified to by you?

A. I don't think you have the right figures at all.

Mr. Chambers: You are all wrong.

Q. What were they?

A. I can't recall, but I think you are wrong.

Mr. Chambers: I know he is. I was drawing

41483 that finding last night.

Mr. Ransom: That doesn't prove anything.

The Master: Has Judge Nichols decided that case?

Mr. Chambers: No. He will shortly. Are you trying to take our version of it?

Mr. Ransom: I am questioning him on the figures reached on his version.

Mr. Chambers: He did not testify to all that, he did not cover that whole field. Mr. Maltbie only covered certain lines in the Albany case. Mr. Hine covered certain lines.

Mr. Ransom: Certain or uncertain.

41484 Mr. Chambers: I think the working capital you gave is substantially correct, as I remember it, $105,000, or thereabouts. I think that was it.

Mr. Ransom: Well, on page 3746, in reply to a question by Mr. Chambers, "Mr. Maltbie, what amount have you allowed for overhead in your computation?" Mr. Maltbie said, "Well, my computations, I have used the figure in evidence, because in order to facilitate the case it would be necessary to have some figures in preparing these tables, and I took the figures in evi-

dence at the time we prepared the tables, or the figure Mr. Hine was prepared to testify to at the time he made these figures." Then, Mr. Towner said, "I do not understand the particular tables counsel is referring to."

The Witness: My estimate of so-called overhead expense was prepared independently of Mr. Hine's opinion, and they somewhat vary. For 1918 I had a figure on the basis of $10,000 organization, an estimate made by Mr. Whitbeck of $7,000 for Albany only. I had a figure for interest and taxes during construction, and legal 41486
and administrative expense and all that sort of thing $35,000.

Q. Do you remember being asked that question and making that answer?

A. I remember being interrogated upon that point; I don't remember the exact language.

Q. And on page 3199, you recognize this tabulation, exclusive of the Grand Street property, $1,161,000 plus?

A. I recall that.

Q. That was a figure submitted and used by you in calculating your $35,000 of overhead?

A. No, that was not the figure which I used. 41487

Q. Well, that is the figure given by Mr. Hine, that $1,161,000?

A. Mr. Hine gave a figure of $1,161,260 for the value, that is, the normal reproduction cost, less depreciation, as of December 31, 1918, for the physical property of the Albany Company, exclusive of the Grand Street holder, exclusive of land and office buildings. Organization expense, interest, etc., were left out, because they were not part of the tangible property.

Q. And you added the intangibles?

41488 Milo R. Maltbie, Cross.

A. Mr. Hine gave certain figures and I gave certain figures on certain items.

Q. Were those that I just read the figures which you gave?

A. I think so, as I recall it. They are about the figures, anyway. I have no reason to question the accuracy of the record.

Q. In your estimate of $7,550,000 cash for working capital for the Consolidated Company for 1918, you assume that the bills for coal and oil, at least, were paid from twenty to twenty-five days after the end
41489 of the month covered in the bills to the consumer, did you not?

A. No, I did not make that statement.

Q. What was your assumption with respect to the time of payment of bills for coal and oil?

A. That they were paid between the 20th and the 25th of the month, the bills paid at that time being bills rendered in the preceding calendar month.

The Master: You mean that they were not paid until about fifty or fifty-five days after they were rendered?

The Witness: Not necessarily, it would vary from fifty to fifty-five days, down to twenty to
41490 twenty-five days, because there might be some of them rendered right at the end of the month, the oil being delivered right through the month. That is according to the testimony.

The Master: The bills come in when the merchandise is delivered, as you understand it?

The Witness: Yes, or approximately at that time. It might not have been exactly the time it was delivered and receipted for, but as I recall it that relates to the date of the invoice.

Q. Now, you have eliminated all of the accounts receivable due from the City of New York in your allowance for working capital, have you not?

A. I have.

The Master: Why?

The Witness: On the ground that the City of New York is not a party, that this case is not an attack upon the rate charged to the City of New York.

The Master: The City owes them some money.

The Witness: Yes.

The Master: What difference does it make?

The Witness: The amount of working capital which they must have to carry the City of New York should be taken into account in fixing the 41492
rate to the City of New York.

Mr. Ransom: That is not what the United States Supreme Court held.

Mr. Chambers: How could the United States Supreme Court hold otherwise when the City was a party before?

The Master: We have his theory, you can argue it out later on. Without knowing what the Supreme Court said about it it does not appeal to me.

The Witness: Just a moment on that proposition, your Honor. Assume that the contrary is correct, that in fixing the amount upon which the 41493
company is entitled to a fair return from general consumers, the working capital necessary to carry on the City's business were put in, then they would be getting a return on the charge for the consumers when they are not attacking the City rates.

The Master: I know, but they have to deliver the gas to the City. The only difference between the City and an ordinary private consumer is that the City gets it for five cents less, as I understand it.

Mr. Chambers: They don't attack it, they admit it is constitutional.

Mr. Ransom: The Supreme Court said, "So long as the total is enough to furnish such a return it is not important that with relation to some customers the price is not enough."

Q. Have you made any computation of the amount of investment devoted to the manufacture and distribution of gas for the gas service by the complainant company to the City of New York?

A. Well, I made some study of it.

41495 Q. Have you made any computation?

A. Oh, I may have made some computation.

The Master: Have you any here?

The Witness: No.

The Master: Have you any figures in mind now?

The Witness: No.

Q. What were the monthly pay rolls of the Consolidated Gas Company in its operating department, exclusive of general administration during 1918?

A. I don't know.

The Master: Didn't you have to know that to figure working capital?

41496 The Witness: No. In fact, we asked Mr. Brundage that question because I wanted to find out.

The Master: The books show.

The Witness: Not the monthly pay roll.

Mr. Ransom: Well, the books are in evidence.

Q. What were the monthly pay rolls for the general office during 1918?

A. The figure I have is the total for the general officers' salaries for the entire year, which divided by twelve—

Q. Don't you know the difference between general office pay rolls and general officers' salaries?

A. I am giving you just what I had.

Q. This is not a case of druggist's substitutions. I am asking you whether you can tell, whether you know the monthly pay rolls for the general office during 1918?

A. I do not have the items showing monthly pay rolls.

Q. Can you state the amount paid out monthly for materials and supplies used in the manufacture and distribution of gas, other than for the construction of additions or betterments during the year 1918? 41498

A. No, I haven't the figure in that form.

Q. You didn't have that to take it into account?

A. I took into account those factors, but I did not have that figure in that form.

Q. You can't give it in that form?

A. I cannot.

The Master: Did you ever have them in that form?

The Witness: No.

The Master: Then you did not consider them in that form?

The Witness: Not in that form.

Q. You have computed, according to your testimony, that between the time of the bills to consumers for gas furnished to them and the time of the payment by the consumer, there elapses on the average less than a month? 41499

A. That is correct.

Q. And that was the basis or part of the basis of your computation on working capital?

A. That is one of the factors.

Q. Is it not a fact that between the time the Consolidated Gas Company furnishes gas to the consumers,

and the time the company receives payment from those consumers of their bills, there has elapsed much in excess of a month's time?

A. No.

Q. Have you figured out the average length of time between the furnishing of gas to the consumer by the company and the billing by the company to the consumer for that gas?

A. As I recall it, the testimony shows, anyway I assumed that there were a few days elapsing between the time when the meters were read and the
41501 bills were sent out to the consumers.

Q. That is not what I asked you.

A. Now, just a moment. You would add to that time fifteen days for the average of the amount.

Q. Now, there are certain factors with respect to that. One is the length of time which elapses between the rendering of the bills and the payment by the consumer. That is a factor you have taken into account, isn't it?

A. That is one of the factors I have taken into account, yes.

Q. Another factor is the length of time, which you say some one testified to was a few days, between the
41502 reading of the meters and the rendering of the bills?

A. Yes.

Q. Now, there is still a third factor, and have you computed this, the length of time which elapses between the furnishing of gas to a consumer and the rendering of a bill to the consumer for that gas, the average time?

A. As I said a moment ago, that would be fifteen days, half a month for the average, and the time that elapses between the reading of the meter and the sending out of the bill.

Q. How often are meters read?

A. They are read continuously. Most of them are

read about once a month. The testimony is that there are some weekly readings, and an appreciable amount is sold through prepayment meters, about one-sixth of the total.

Q. I don't believe you caught what I have in mind. Gas is rendered to you as a consumer today by the company that had to be made some time previously. Have you computed how long, on the average, in the case of you and all other consumers, how long a period elapses between the furnishing of the gas and the rendering of a bill for it?

The Master: What do you mean by "furnishing the gas"? 41504

Q. The consumer gets the gas today, and he gets his bill twenty or thirty days from now. Meanwhile the company has to lay out the material, labor and supplies for that gas.

The Master: I thought Mr. Maltbie had answered that fifteen days, plus a few days, would be the time.

The Witness: For the average on the monthly bills. Of course it runs thirty days for the first one-thirtieth of the gas they get.

The Master: Of course there will be a difference between the time the gas is actually made and the time it is furnished to the consumer. 41505

The Witness: A little difference.

Q. How do you figure that time between the time that the gas is furnished and the time the gas is billed?

The Master: I think you mean delivered to the premises.

Mr. Ransom: That is what I mean.

The Master: I think he answered that.

Mr. Ransom: No, Mr. Maltbie has answered with respect to the average length of time which

elapses between the rendering of a bill and the paying of a bill.

The Master: He says the average time between the furnishing of the gas, that is, the delivery to the meter of the consumer, and the time the bill is sent to the consumer, is fifteen days, plus a few days between the reading of the meter and the sending out of the bill, say eighteen or twenty days.

Q. After a bill is rendered to the consumer, how much more time elapses on the average, according to
41507 the information used by you, between the rendering of a bill and the paying of the bill?

A. As I said, that shows that there is about twenty days elapsing, twenty to twenty-five days between the time when you sell the gas, when it is entered upon the books of the company and charged to the consumers in the consumers' ledger, and the payment of the bill.

The Master: How much?

The Witness: About twenty to twenty-five days.

The Master: After the meter is read?

The Witness: After the amount is entered on
41508 their books and charged to the consumers.

The Master: That means after the bill is sent out, practically, until it is paid?

The Witness: Yes, sir, practically.

The Master: So it is 45 days from the time it is furnished to the consumer until the time the bill is paid?

The Witness: Yes, about 40 days.

Q. 45 days?

A. 40 to 45 days.

Q. Did you apply this factor of 45 days to your computation of working capital here?

A. I did.

Q. How? Give me the details of it.

A. Where are you going to begin? Do you want all the details in these working papers?

Q. The details of this 45 day factor.

A. Well, first is the materials and supplies—

The Master: I thought you were talking about another item.

The Witness: It goes all the way through, that factor.

Q. I am talking about the matter of accounts receivable. The consumers get gas on the average 45 41510
days before they pay for it. Now, how do you say that 45 day factor was used by you in making your computation, for accounts receivable?

A. I say I used it all the way through. It is not just in one place.

Q. How did you use it about accounts receivable, money due from consumers?

A. I told on direct-examination that I did not estimate accounts receivable.

Q. Not at all?

A. I have told the reason why I did not take accounts receivable. Accounts receivable include not only the amount of money and materials, but the 41511
company has to provide in the way of working capital, to include other things.

Q. Certainly accounts receivable for consumers relates only to the gas business.

A. Well, not generally speaking, that is not true.

Q. But, for gas furnished, moneys due for gas? Accounts receivable, moneys due for consumers, relates only to the gas business, doesn't it?

A. No.

Q. Moneys due for gas furnished?

Mr. Chambers: Oh, that is different.

Mr. Ransom: That is what I said and said repeatedly.

Mr. Chambers: No, you said "money due from consumers." You did not include the word "gas." A consumer might owe for a lot of things except gas.

The Witness: Appliances and things of that sort.

Q. How did you apply it to moneys due from consumers for gas, this 45 day figure?

A. I say I used it all the way through.

41513 Q. How did you use it on that?

A. I did not estimate accounts receivable separately. I estimated the amount of supplies and cash that would be necessary in order to carry the company from the time it has to make these advances until it gets money back, allowance being made for the time which elapses between the furnishing of supplies and the payment of the bills.

The Master: Was there an exhibit showing what Mr. Maltbie included in working capital?

Q. What are the winter operating expenses for a month, did you figure that?

A. Winter operating expenses?

41514 Q. Yes, the operating expense.

A. No, I took for the year.

Q. Well, you have got to have working capital to provide for your winter months, haven't you?

A. That is true.

Q. And the winter operating expenses running, as has been testified to in this case, $2,000,000 per month, for 45 days that would be three and a half million for accounts receivable alone, wouldn't it?

A. During the month of December?

Q. Any of the winter months.

A. How much?

Q. 2,000,000 a month, and 45 days.

A. The accounts receivable at the end of 1918, December 31st—

Q. I am asking you about winter operating expenses.

A. That would be in the winter. The accounts receivable at the end of December 31, 1918, excluding the City of New York, was, in round figures, $1,035,000.

The Master: How much was the city?

The Witness: Well, the total I have here for accounts receivable at the end of 1918 is 41516
$1,096,000, and if there is no other factor it would be about $60,000.

Q. How much money did the Consolidated Gas Company actually expend during the month of December 1918, for operating expenses of all kinds?

A. I haven't it in that form.

Q. Have you any idea how much it was?

A. Well, of course you can get it approximately by taking the year and adding something, but I haven't prepared an estimate.

Q. Suppose the operating expenses per months, in December, money paid for labor, materials and supplies actually going in, all legitimate expenses, were as 41517
much as $2,000,000 that month, wouldn't it figure about three and a half million?

Mr. Ransom: The company having to wait 45 days.

A. What was that assumption?

Q. That they actually had to pay out in money during the month of December, for operating expenses, $2,000,000—wouldn't they need three and a half million dollars to cover that?

A. No, before you can settle that you must take into account the fact that their coal and oil is paid

for, as I said, between the 20th and 25th of the month, so that they have had the use of that coal and oil practically up to the time when they get the money back for the coal and oil that they have furnished through the gas to consumers.

By Mr. Ransom:

Q. Didn't you find that the oil was actually paid for 15 days, during 1918?

A. As the testimony is, that is the way I have taken it at least, the bills, beginning with those rendered from the first of the month to the end of the month,
41519 are paid between the 20th and 25th of the following month.

Q. Well, that does not cover 45 days.

A. It covers pretty nearly 45 days, 40 to 45 days on the average month's supply of oil and coal.

Q. Out of this amount of a million and a half of accounts receivable at the end of 1918—

A. How much? It is less than $1,100,000, including the City of New York.

Q. Well, $1,100,000—that does not include the gas that has been furnished to consumers during the month of December, not yet billed, does it?

The Master: Of course it does not.

41520 A. Well, there are some prepayment meters, and some weekly meters.

The Master: It does not include gas not yet billed, does it?

The Witness: Well, not outside of prepayment meters.

The Master: It does not include gas that has not been billed? It would not be on the books as receivable if it had not been billed?

The Witness: Not in accounts receivable, no. They may have gotten the money from it for the prepayment meters.

The Master: But this figure does not represent gas that is not billed yet?

The Witness: That is right.

Q. Have you made any calculation as to how much that would amount to?

A. I have not. Of course, you understand that outside of the advances for these operating expenses I have allowed in 1918 $700,000 for materials and supplies to be carried. That does not include stoves and appliances.

Q. Are you not aware from the testimony in this case, or from any examination that you or your representatives have made of the underlying data in this case, that during the year 1918 coal bills had to be paid by the complainant company before delivery of the coal to the company, and in most instances as soon as the coal was loaded on the cars at the mine? 41522

A. I have stated that I have taken the testimony, which was to the effect that coal and oil bills were paid about the 20th or 25th of the month. I based my calculations upon those facts.

The Master: And not upon the factor that Judge Ransom has just indicated?

The Witness: No.

Q. Did you not ascertain the fact that under the oil contracts the Consolidated Gas Company during 1918 paid its oil bills approximately by the 15th of each month? 41523

A. I did not so understand the testimony.

Q. Did you not ascertain that during 1918 the Consolidated Gas Company discounted bills for materials and supplies whenever discounts were allowed by creditors?

A. As to general supplies, yes.

Q. Now, will you state how you reached a conclusion that in spite of the increases in the prices of

materials, coal and oil, from 1913 to 1918, you should allow the company less than $400,000 additional working capital?

A. In the first place, if you will look at Defendants' Exhibit AA-429, you will note that the difference between materials and supplies, advanced payments, appliances, and cash, column B, between 1913 and 1918, is nearly $700,000.

Q. Cash?

A. Nearly $700,000.

Q. Which item?

41525 A. Column B. To be exact, it is $690,000. The increase in Column C, rental paid in advance, is about $250,000, which, taken from the amount, reduces the figures so that the explanation in part is due to the increase in rentals paid in advance.

By the Master:

Q. Tell me how you make up this $2,390,000, will you?

A. You want the items?

Q. Yes.

A. $700,000 for materials and supplies.

Q. Is that the amount they had on hand, or would you say they ought to have that on hand?

41526 A. Shall I give the items and then explain?

Q. Yes.

A.

Materials and supplies	$700,000
Stoves and appliances	500,000
Operating expenses, advanced and gas purchased,	640,000
Cash	550,000
	$2,390,000

Q. How much of that $640,000 is operating expenses?

A. Well, about $450,000 I should say, perhaps a

little more. In the first place it is the average for a year, and in determining the average for a year for materials and supplies I have taken the amounts for consideration at the beginning of the year and at the end of the year, and have averaged them in determining the amount for the entire year.

Q. How about stoves?

A. The same thing is true as to stoves.

Q. How about operating expenses?

A. The same thing is true.

Q. Did you total all the operating expenses for the 12 months and divide by 12?

41528

A. That is one of the things I did; but I did not take that figure exactly.

Q. Did you take the pay rolls for each month and add them up?

A. No.

Q. Where did you get the total pay roll for the year?

A. I did not use a total pay roll for the year, I did not make it up that way.

Q. How did you figure cash $550,000, what is that based on?

A. As I have testified the first day, I think, that is about 3 per cent of the total expense in a year on the gas business.

41529

Q. Why 3 per cent?

A. That is my experience, the result of the studies I have made, that that is about the necessary cash to have on hand to pay your bills. Of course the company at certain times of the year has much more than that, because it has money accumulated to pay interest and dividends and taxes and things of that sort, so that as a matter of fact it has in its treasury much more than that, but I considered $550,000 as an amount on the average throughout the year sufficient for cash working capital.

By Mr. Ransom:

Q. As against the $1,500,000 which the company had and used?

A. At the end of the year I have $1,250,000, but that was cash for all purposes, everything that this company does, including its investments, including its work for other companies, as well as the gas business.

Q. What did you do with the $1,600,000 of accounts receivable in connection with the gas business, where did you make provision for that in this state-

41531 ment of working capital?

A. What is the figure you gave?

Q. Well, as of December 31, 1918, a total of $1,594,995.23. That is not the total accounts receivable as per the books, it is simply the accounts receivable in connection with the gas matters.

A. Mr. Maltbie says it is less than $1,100,000.

Q. Sundry creditors gas bills as of December 31, 1918, was $941,818.18. Where did you make your provision for that?

A. Just a moment, let us get the facts as we go along. What figures did you give for accounts receivable at the end of 1918?

41532 Q. Sundry consumers gas bills, as per books, $941,818.18?

A. What else?

Q. Accounts receivable in installment payments, $12,829.63?

A. Yes.

Q. Accounts receivable, billed but unpaid, branches, $141,326.72.

A. Yes.

Q. Lexington Avenue Subway, expense incurred by the company, not yet reimbursed, $279,758.54?

A. That is not a gas sale.

Q. That is an account receivable.

A. Well, you said for sales of gas.

Mr. O'Brien: What is a little word between old time friends?

Q. General expense, deferred charges, $137,846.86. Sundry debtors billed but not yet paid $81,415.30?

The Master: Then the last item.

Mr. Ransom: It includes that. The total is $1,594,995.23.

The Master: What provision have you made for the receivables, exclusive of this Lexington 41534
Avenue and general suspense item?

A. Well, I think if you take them out you would practically have the figure I gave a moment ago, of about $1,100,000.

The Master: What provision have you made for that?

The Witness: The provision I have made for that, including the City, which would bring it down to about $1,035,000, is through the provision of materials and supplies for the making of this gas, and the cash, the materials and supplies in stock, things of that sort, to carry this company until it gets the money back. 41535

Q. On what theory did you exclude this $279,758.54 which this company has tied up in expenses in connection with these mains and so on necessitated by subway construction? Hasn't the company got to carry that in suspense account, provide money for that?

Mr. O'Brien: I am going to object to the form of the question. He thinks he is examining Dr. Weber. You will note he starts out with, "On what theory do you exclude." You would think there was to be an assumption in this case that certain things ought to be included because Mr. Carter put them in.

The Master: What is your objection?

Mr. O'Brien: I am objecting to the form of the question, and I object on general grounds that it is incompetent, irrelevant and immaterial.

The Master: Well, I won't sustain it on any other grounds you specify.

Mr. O'Brien: There is no sanctity around this item because Mr. Carter put it in.

Mr. Chambers: Not proper cross-examination.

The Master: Not that. Guess right, and I will sustain it. I am not going to guess it.

41537 Mr. Chambers: It is argumentative.

The Master: I will sustain it on that ground, it is purely argumentative. Counsel is going to argue that with me. What is the use of arguing with Mr. Maltbie? He says he took it out.

Mr. Ransom: We want to know on what theory he tries to wreck this company like he did Minneapolis.

Mr. O'Brien: You know what I mean, it is this pseudo craftiness of the witness—

Mr. Ransom: Witness it right.

Mr. O'Brien: Of counsel. Well, Ransom, that goes 100 per cent, because you have been testifying since we got into the case.

41538

The Master: I sustain the objection on the ground that it is purely argumentative. The witness says he excluded it because the amount set up as a receivable on this particular claim is not an item to be included in working capital.

The Witness: May I ask your Honor whether the statement is on the record that Judge Ransom recently made about doing the same thing as wrecking the Minneapolis company.

The Master: I don't know whether the stenographer has that or not.

The Witness: If it is in the record I ask the privelege of replying to that uncalled for, uninvited, uncaused and unjustified statement.

The Master: I will give you that privilege.

The Witness: If the stenographer will read it.

(Stenographer reads as follows):

"We want to know on what theory he tries to wreck this company like he did Minneapolis."

The Witness: I want to say that the intimation that I wrecked the Minneapolis Company is absolutely false, and it is a lie. It is a false statement, it cannot be proved, and you have no busi- 41540
ness to state it here.

Q. Is the Minneapolis Company now in the hands of a receiver?

A. Yes, but it was not my recommendation that did it.

Q. Did the City Counsel in Minneapolis accept and put in force the rate which you recommended?

A. I did.

Q. What was that rate?

A. That rate was 95 cents for last year.

Q. And the company thereafter went into the hands of a receiver?

A. Yes, but the cause is not as you indicate. 41541

Q. What rate did you recommend for this year?

A. 85 cents. Furthermore, those rates were accepted by the company when I was out there two years ago, if you want to know the facts.

Mr. Chambers: You had better inquire the causes of the receivership.

The Witness: The causes of the receivership was this: That company has about $6,000,000 of bonds, and $800,000 in stock, and any company that has to make a payment to the trustee, as that company has to do under the mortgage

because of its overcapitalization, was bound to get into trouble, and it did get into trouble. The trouble was in the capitalization of the company and not in the rates.

The Master: All right, we have had enough on that.

Mr. O'Brien: We have not had an apology from Ransom yet.

Mr. Chambers: No, it is useless to try to get him to apologize.

The Master: We have had the explanation.

41543 Go ahead.

Q. Now, your amount of $180,000 in column E, 2 per cent interest on cash, that is 2 per cent interest figured on $9,000,000, is it not?

A. No.

Q. Well, upon what?

A. That is not 2 per cent interest upon cash.

Q. Well, on daily bank balances?

A. No.

The Master: Well, what is it?

Q. What is it?

A. The interest on cash is $11,000 for that year, and $180,000 represents $11,000 translated into an

41544 amount upon which 6 per cent would be earned. That is a little less than the true amount.

Q. This says 2 per cent interest on cash. On what amount is $180,000 2 per cent interest?

A. It is not on anything, so far as this table is concerned, and the table does not say so.

Q. What does the heading of that column E mean, if you can explain it?

A. I said that 2 per cent interest on the cash, which is $11,000, the cash being $550,000, is equivalent to 6 per cent of $180,000; so that if you wish to determine from column D the amount upon which the com-

pany is entitled to a 6 per cent return and you do not put the $11,000 in on the income side of the statement that the court is making up, you deduct $180,000 from the balance, or the amount stated in column D, in order to determine the amount upon which the company is entitled to 6 per cent return.

The Master: Or 7?

The Witness: Yes, or 7, of course if 7 or 8 or 9 is taken the figure will be a little different.

Q. That is, if interest on bank balances is not credited to the income account, the amount of working capital under your computation would become for 41546
1918 $1,480,000 instead of $1,300,000?

A. That is correct.

Q. Well now, I ask you on what amount of money as the daily bank balance, did you make the computation shown in column E, if any?

A. A daily bank balance in 1918 of $550,000.

Q. Well, from an assumption by you of a daily bank balance of $550,000, how did you reach this $180,000 figure?

The Master: 6 per cent of that, as I understand it?

The Witness: $550,000 at 2 per cent is $11,000, divided by 6, and you will get something over $180,000. 41547

The Master: He capitalizes the $11,000 at 6 per cent?

The Witness: Yes, that is it precisely.

Q. With respect to Table 295, Exhibit AA-466, is it your view that the whole of the general office building, that is not only the portion occupied by the complainant company but also the 6 or 7 per cent or thereabouts of the floor area occupied by tenants should be included for what you call the rate base or the

amount of property on which the gas rate should provide a reasonable return?

A. I have expressed no opinion upon that.

Q. Do you deem the entire rented portion of that general office building to be used by the Consolidated Gas Company in its own gas operations for its own consumers?

A. I have not expressed any opinion upon that.

Q. Haven't you any opinion when you undertake to make up what you call a rate base founded on cost, of whether you should include that or any part of the
41549 general office building?

A. I have not an opinion upon that as to how it should be apportioned, personally.

Q. You have or have not?

A. I have not.

Q. You testified in the Albany gas case on the question of what should be done as to the inclusion of an office building in the investment on which a utility is entitled to earn a return, did you not?

A. Yes, I testified there as to an office building which was not used at that time.

Mr. Chambers: Yes, but if the Master please, one of them—there were two office buildings,
41550 and one of them was sold since the close of the trial, they sold the old one.

The Master: I remember you told me that before.

Q. You haven't any opinion on this office building as to whether it should go into the rate base wholly or in part?

A. I have not formed any opinion as to how that building should be treated.

Q. And you have left it out?

A. I have left it out of the first figure upon the sheet, but have shown it upon this sheet for the cost of the land and buildings separately.

Q. By the word cost in the heading of this table of rate base founded on cost as applied, for example, to land, do you give the cost to the Consolidated Gas Company, cost to a predecessor company of the Consolidated Gas Company, cost to the first gas franchise holders, cost to the grantor of the first franchise holders, or cost to the original settlers of Manhattan Island?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and embodies a lot of—

The Master: I will assume the question to call for the witness' statement as to what cost it means. 41552

Mr. Chambers: I cannot conceive of any intelligent lawyer asking such an unintelligent question, it contains a lot of argument.

Q. Cost to whom?

Mr. Chambers: That is all right, what cost did he mean. A rambling question like that ought to be stricken out on general principles.

Mr. Ransom: You are certainly afraid of your witness.

Mr. Chambers: Oh, awfuly afraid. You are a little afraid too, I notice.

The Witness: Since 1884 the costs have been included for the land included as paid by the company. 41553

The Master: Well, only such portion of it as you have allowed for used and useful?

The Witness: Yes, with the exception of those portions that have been apportioned.

Q. What company?

A. Consolidated Gas Company.

The Master: Since 1884, that part of it that he deems used and useful, or Mr. Hine did.

Q. Prior to 1884, cost to whom?

A. For the land acquired prior to 1884, with one or two exceptions, the cost has been taken from Senate Document 47.

Q. Well, cost to whom?

A. If you will wait just a minute, I will get through.

Q. That is all I ask of you. I did not ask you where you got it, I will take that up later, perhaps, but I asked you cost to whom?

A. As shown in Senate Document 47, where the cost is shown to the companies, or purported to be shown to the companies which were investigated at

41555 that time.

Q. You mean the constituent companies?

A. The constituent companies.

Q. Is it true that prior to 1884 you have taken the cost of the land to the constituent companies?

A. As I said, I think with one or two exceptions.

The Master: What were those exceptions?

The Witness: I will have to go through the figures, but I think one of them is the property at the corner of 114th Street and Third Avenue, that office building and land, as to which I could not get anything that was satisfactory to me, and I took the figure at which it is included in the so-

41556 called Rowland appraisal. I do not think Rowland appraised it, but it is in that.

Mr. Ransom: I object to it, he hasn't any knowledge about it.

The Master: Oh, I will take it.

The Witness: I can give the references to the pages.

The Master: Do I understand this, to get this matter in shape very quickly, so far as Senate Document 47 shows the amount paid for properties by the constituent companies, you took them?

The Witness: Yes.

The Master: And where those figures did not appear, and you were not able to get them, you took the so-called Rowland Appraisal?

The Witness: Yes.

The Master: Is that correct?

The Witness: Yes, I think that is correct.

Q. Why did you stop with the cost to the constituent companies, why didn't you go back to the cost to the first franchise holders?

A. It was not there.

Mr. Chambers: Get it for us, and we will. Even the constituent companies' books are gone. 41558

The Master: I think this is very largely argumentative. I can see where, upon a summing up by counsel, he will urge that that is what Mr. Maltbie in effect is doing, when he goes back of 1884, and that he might very well go back and find out when Mr. Bleecker Van Rensselaer or somebody else owned a piece of land and put it into a gas company, but that is argument.

Q. What parcel of land owned by the complainant company and shown on Exhibit 178, did you exclude from your statement of rate base founded on cost as to land for 1918?

The Master: I think you might put that in a different form. You did exclude the properties that Mr. Hine excluded under AA-126, didn't you? 41559

The Witness: Yes. In other words, I included what, as of that date, Mr. Hine testified—

The Master (interrupting): Included in AA-126?

The Witness: Yes, and his testimony in relation thereto.

Q. What land did you include for 1918 in what

you call the rate base founded on cost at Hester and Elizabeth Streets?

A. I included the entire parcel.

Q. Well, what part, can you identify?

A. Block 239, Lots 1 and 5.

Q. Well, how did you ascertain, if at all, that the descriptions of the plots of land now given on the tax maps a certain block and lot number coincided with the descriptions of the land to which you attributed a certain cost where the land was acquired on November 11, 1884, or prior to that date?

41561 A. Well, I can make a general statement.

Q. No, I don't want a general statement. How did you find out?

The Master: How did you identify that property?

Q. How did you find out?

A. Hester Street?

The Master: Yes.

Q. How did you find out that that was identical with what you found in some document prior to 1884? You are examining the so-called Yalden report as contained in the senate document?

A. I am preparing to answer your question.

41562 Q. By an examination of that report?

A. Well, by various things.

Q. Is that one of them?

A. How many questions do I have to answer at the same time?

Mr. Chambers: One.

The Master: Well, you are looking at the Yalden report, aren't you, in Senate Document 47?

The Witness: I am at this moment.

The Master: Yes. If you had answered that, we would not have had four questions, or five.

The Witness: In a statement of property taken over from the New York Gas Light Company, as shown in Document 47—

Q. The Yalden report?

A. There is a reference made to the Hester Street property.

Q. What page?

A. At page 46 there is an entry, "Six lots 100 by 150 feet, with office building and works, shop, etc., $100,000."

Q. You are reading from the Rowland appraisal?

A. I am reading from the so-called Rowland ap- 41564
praisal, but he did not appraise that real estate.

Q. You are reading from one of the schedules of the Rowland appraisal?

The Master: No, he did not have those six lots.

The Witness: Yes.

Q. What is the description that you rely on there?

The Master: Six lots 100 by 150.

The Witness: Yes, and in the Yalden report—

Q. You are referring to the $100,000 item for the six lots with the $20,000 additional, making $120,000 at the bottom of page 846?

A. I did not refer at all to the $20,000. 41565

Q. Did you refer to the $100,000?

A. I did.

Q. Now, is that the cost to the constituent companies or to the consolidated companies?

The Master: Wait a minute. You asked Mr. Maltbie to identify it, and he turned to identify it. Six lots 100 by 150 with the office building and work shops is the reference on page 846. Now, you were going to refer to some other page. What is it?

The Witness: Upon page 720 of Senate Document 47.

The Master: That is Yalden now, is it?

The Witness: That is the Yalden report?

The Master: Yes.

The Witness: There is a statement of an appreciation on Hester Street property of $60,000, which, throughout the Yalden report—

Q. Why don't you read what it is?

The Master: Wait a minute, will you?

The Witness: Which, throughout the Yalden
41567 report, is identified with the Hester Street property.

The Master: Just as Hester Street?

The Witness: Just as Hester Street property.

Q. That appears under the heading, "Particulars of credit to surplus capital account, June 1, 1871"?

A. Correct.

The Master: As extracted from the books of the New York Gas Light Company?

The Witness: Correct.

The Master: I don't quite understand how that identifies anything or fixes any cost.

The Witness: But throughout it compares the
41568 original cost of the property with what it was taken over at?

The Master: You are assuming that it was the same property?

The Witness: I am, to that extent.

Q. That is, the cost you have put into this Exhibit 466, all the way down from 1906 down, is obtained by taking the hundred thousand dollar figure given in the Rowland report for 1884, and deducting the $60,000 for 1871?

A. And adding the assessments since 1884.

Q. To what sum was the value of this property ap-

preciated in 1871, if there was a $60,000 appreciation what was the total sum in 1871, that is, to what was the $60,000 added?

A. Well, I do not absolutely know to what.

Q. Have you any idea?

A. That amount was appreciated.

Q. Have you any idea?

A. Just a moment now.

The Master: Have you any information about it?

Mr. Ransom: So far as I know, it was $160,000 leaving the Rowland appraisal correct. 41570

The Master: That is what made me ask whether you had any information about it.

Mr. Chambers: I object to Judge Ransom testifying on the record. Where is the $160,000.

The Master: He is not testifying. I asked him a question so as to see if I could get a short cut somewhere, and if there was any definite information I was going to call for it right away. Now, I can see at once where this is really unreliable. It may well be that the New York Gas Light Company in 1871 wrote this property up to two hundred or three hundred thousand dollars which possibly was $50,000 more than they paid for it, and yet the $100,000 was very much less than they carried it on their books at the time. 41571

The Witness: On page 709, under the heading "B," New York Gas Light Company, particulars of sale to Consolidated Gas Light Company, November 10, 1884—

Q. This is Yalden again?

The Master: Yes.

The Witness: At the head of the column state of account prior to credit of appreciation, appreciation written up and sold for, there is opposite

to Hester Street property, under the first column, $100,000, appreciation written up, nothing, sold for $100,000, which would indicate that there was no writing up of this property in 1884, but the $60,000 was the amount written up in 1871, and the amount to which it was written up is the amount given there, $100,000.

Q. That confirms just what I said, that prior to the appreciation the amount was $100,000, and they added $60,000, making $160,000, and then when you now take off the $60,000, it leaves $100,000 left?

41573 A. They did not add anything to it, as shown by this page, in 1884.

Q. This last reference of yours was to schedules of the so-called Yalden report?

The Master: Yes, he said so.

Q. And have you, from any part of Senate Document 47, or in any other way, determined that the metes and bounds of the plots of land now known as Block 239, Lots 1 and 5, were identical with the metes and bounds of the lots of land referred to in 1871, or any of the other years referred to by the Yalden report?

A. I think I have answered that.

41574 Q. You have not begun to answer it?

A. Well, I can go over it again.

Q. Where, in the Yalden report do you find the metes and bounds of the property referred to here as Hester Street?

A. I do not find the metes and bounds given in the Yalden report.

Q. Where in Senate Document 47 do you find—

The Master: Other than the Rowland reference to 100 by 150?

The Witness: He asked if it was in the Yalden report, and I said no.

The Master: Now, he is asked about Senate Document 47.

The Witness: And I have referred to six lots 100 by 150.

The Master: And I have added to it "other than Rowland's identification of six lots" what is there to identify the six lots that were carried on the books in 1871, with the Hester Street property? You have assumed the identity, I imagine.

Mr. Chambers: There may be something in the testimony of Yalden or Rowland.

The Witness: Well, I have drawn that conclusion from the statement made in the Yalden report that the property was appreciated to $100,000. 41576

Q. From what part of the Yalden report did you make the assumption that the metes and bounds of the present Block 239, Lots 1 and 5 are those which are referred to in 1871 and the other portions covered by the so-called Yalden report.

Mr. Chambers: I object to that on the ground he has already answered two or three times.

The Master: Although I think that has been fully covered, I will allow it.

A. From the pages I have referred to, and the text in this report relating thereto. 41577

Q. Did you, or any one for you, examine the deeds for the grantees who preceded the complainant company in the ownership of this land?

A. Well, they examined some of the deeds. I do not recall whether they examined the one relating to this property or not.

Q. To the $40,000 which you assumed for this Hester Street property, what assessments did you add?

A. $760,000 from 1884 to 1906, and $258,000 after that. I have rounded all of those figures off to the even dollars.

Q. Did you note on page 605 of Senate Document 47 the testimony of Perry, one of the committee's witnesses, that this property was valued at $85,000?

A. I looked over that testimony but that was testimony as to the value of the property and not as to its original cost to the constituent companies.

Q. And that was testimony in 1885 and 1886, when the reasonableness of the figures placed upon the reorganization were under investigation by the committee, were they not?

A. Well, some time along there. I do not know
41579 just the time that the testimony was given.

Q. And Mr. Perry called as a witness for the Committee was a Deputy Tax Commissioner of the City of New York, was he not?

A. Well, he had been anyway. I do not recollect whether he was at that time. There were two witnesses, one Perry, and the other—there were three witnesses called, as I recall it, and Perry was one of them, who were called as to the value of land, the real estate.

Q. There is no doubt, is there, that the way you reached this $40,000 figure was to take the $100,000 figure found in the Rowland schedule, a so-called Row-
41580 land schedule, and deduct the $60,000?

A. There is no doubt in my mind.

Q. Now, what did you assume in your statement of the cost of land to have been the cost of Block 989, Lot 1, Parcel 1, which forms a part of the 14th Street station, upon which the East 15th Street holder is located?

A. $56,500.

The Master: To whom?

The Witness: To the constituent companies.

Q. What figure did you give, $56,500?

A. Yes.

The Master: Which one, which company?

The Witness: That is the Manhattan Gas Light Company.

Q. What is the total figures which you put that property in at for 1918?

A. Is that just Parcel 1?

Q. Parcel 1.

A. I do not readily turn to that figure. If you have the figure there, I gave it, Parcel 1 and Parcel 2, to Mr. Alrich.

Q. Well, Parcel 1 was $58,105, which included $1,605 for assessments made subsequently to 1884, or 41582
a computation of $56,500 as the cost of this property to some prior company. Now, what did you assume to be the cost of Parcel 2?

A. $6,000.

Q. Now, from what part of or what page of the Yalden report did you take these figures as to Lot 1, Parcel 1, Block 989?

A. Page 677 of the Senate Document the Yalden report.

Q. Well, what figure, what entry?

A. I will read you the whole thing. Under the column headed, date, 1857, January 1, in the column headed, Description of Property— 41583

Q. Won't you first read the head of the sheet, "A. Manhattan Gas Light Company Real Estate Investment, 5 Yearly Periods"?

A. Well, if you want to be exact, debtor on one side and credit on the other side, five yearly periods, continued.

Q. All right, proceed.

A. Then in the column headed "Location of Property Between 15th and 16th Streets, Avenue C and East River, $125,000," under the heading entitled, "Cost"; under the heading, "Buildings and Improve-

41584 Milo R. Maltbie, Cross.

ments," there is nothing; under the heading, "Apparatus" there is nothing, totals $125,000, and in the column headed, "Sales" there is nothing; "Loss on Sales" there is nothing; "Depreciation Written Off," there is nothing; "Balance, Being Net Cost of Investment, $125,000."

Q. Now, what company owned the property prior to its acquisition by the Consolidated, the Manhattan Gas Light Company?

A. It so states.

Q. Now, what amount was this land valued in the
41585 so-called Rowland Appraisal?

A. Well, I would have to add some figures together here to get that.

Mr. Chambers: I think that is objectionable, both these are in evidence, and he is asking him to do something that they can do themselves, he is asking him as to what this was, and then what Rowland had, and that is all in the testimony, all argument.

Mr. Ransom: We will come back to that in a minute.

Q. Do you know what the Rowland—

The Master: Wait a minute, he is figuring that.
41586 He says he has to figure that.

The Witness: $603,000, unless I make a mistake here. I tried to hurry the calculation.

Q. That is for both parcels, or for one parcel only?

A. I should say that is for the entire block. That is comparable, though. I understood your question to be, at what figure was that entire block placed in the Rowland Appraisal?

Q. Well, have you completed your statement of your reference to the portions of Senate Document No. 47, where the figures which you have assumed as the cost of these two parcels, 1 and 2, of Lot 1, Block

089, appear? Is there any other portion of this Senate Document No. 47 where you claim those figures which you have given appear?

A. Well, there are other places in it referring to that property.

Q. Well, now, you have given—

A. There is another one on page 673, and there may be—

Q. (Interrupting.) And on page 703, and they all give this same description and this same $125,000 figure?

A. 703, did you say? That is the New York Gas 41588
Light. Now, you are over into another company.

Q. 673.

A. I have referred to that, I think I referred to that just now.

Q. That is true.

A. And then there is some testimony on pages—

Q. (Interrupting.) Well, you have given cost to some predecessor company of $56,500, Lot 1, Parcel 1 of Block 989, and $6,000 cost to predecessor of Parcel 2 of the same block and lot number?

A. Right.

Q. Where in the Yalden Report do you find those figures anywhere? 41589

A. I do not find those precise figures in the Yalden report.

Q. What figures do you find for those lots and parcels in the Yalden report?

A. I do not find them because they have not—that division was not made at that time.

Q. In the first place, this division into parcels is something that you and Mr. Chambers have made just recently?

A. No.

Q. No?

A. No.

Q. Well, this division into lots, when was that made, do you know?

A. You mean the Tax Department?

Q. Yes.

A. I don't know.

Q. How did you get the figures of $56,500 plus $6,000 for those two parcels?

A. The Yalden report shows the cost of the entire plot, $125,000.

41591 Q. You mean an entire block, the same entire block?

A. No, that is another block.

Q. Where did you find that in the Yalden report?

A. I have just referred to those pages.

Q. Anywhere else except what you have referred to?

A. Yes, I started to tell you there was something in the testimony, and you stopped me on that.

Q. Can you find any metes and bounds of that block or of that lot anywhere in the Yalden report, or in the testimony in Senate Document 47?

The Master: Well, the reference I heard gives some bounds, 15th and 16th Streets, Avenue C

41592 and East River.

Q. That is all you relied on is it?

A. That is your question?

Q. Yes, is that all you relied on, the particulars that you have indicated in Senate Document 47?

Mr. Chambers: I object to counsel arguing with himself and talking, let him ask questions.

A. I started to say that there was some testimony given as to this property.

Q. Where is it?

A. There is a text in the Yalden report relating to it.

Q. Well, you have read it, haven't you?

A. No, I have not read it in evidence.

Q. Well, read it in evidence, what you relied on. You gave 673 to 677.

A. 674.

Q. What did you refer to there?

A. The footing in which it is included.

Q. Which footing, the summary?

A. $865,608 and—

Q. Any reference to this property on 674?

A. If you allow me to finish you will find it out. 41594

Q. Is there any reference to this property on page 674?

A. It is included in that. I am going to give you some references that connect up, if you will wait a minute and let me finish.

Mr. Ransom: I call the Master's attention to the fact that there is no reference whatever to this property on page 674.

The Master: Let us see it.

The Witness: Including that property.

Q. Well, you undertake to say so, but there is no reference to the property?

A. Well, if you want that answered, take all of those footings that are given on pages 675, 676 and 677 and add them together as they classified there, and you will find that $125,000 is included in those footings. 41595

Q. And that is the way you got the metes and bounds of this property?

A. No. If you will keep still a minute. You are getting this information about the way you got some on that Minneapolis case, from inaccurate statements.

Q. I don't doubt the Yalden report is inaccurate.

41596 A. Well, do you want I should read this, what else I considered?

The Master: Let me have the pages.

The Witness: 365—

Q. (Interrupting.) Does that show any metes and bounds?

A. That is not what you asked me.

Q. That is what I want.

A. That is not what you asked me. The bottom of page 365 there is this question, "How did you find" the question was asked with Mr. Yalden on the stand,

41597 "How did you find the item of the cost of the plant distributed in respect to the cost of real estate, and did you examine the books with a view of ascertaining exactly what the lots themselves cost the company independently of plant or structures upon them?

"A. Yes, I thoroughly dissected all those items and examined their books from 1831 to 1834 and ascertained what moneys had been paid out from time to time in respect to those properties."

Q. This is an illustration of the pseudo craft that Mr. O'Brien referred to—

Mr. Chambers (interrupting): Don't interrupt.

Q. This reference does not mention this property.

41598 I am asking you and have asked you a number of times before, is there any portion of the Yalden report which gives any further particulars of the metes and bounds of this property?

Mr. Chambers: I suggest, if the Master please, as I did when counsel tried to drawn me with that Chautauqua County noise, that Mr. Maltbie be permitted to finish his answer.

The Master: I will let Mr. Maltbie say whether there is any other page to which he referred.

The Witness: Page 366, where he is asked is it not true that these lots cost the sum of $865,000,

The Master: Anything else?

The Witness: I think those are all.

The Master: Nowhere there is there any further description of the lots?

The Witness: No, not by the lots.

Q. Nowhere is there any specification of those amounts which you have assigned here or assumed?

The Master: The $56,500 and the $6,000.

The Witness: No, there is not.

The Master: Well, I would like to know how the witness got this $56,500 and $6,000, let me get that.

41600

Q. Did you assume that the properties—

Mr. Chambers: I suggest that the Master be allowed to get what he wants.

Q. Did you assume that the property between 15th and 16th Streets, Avenue C and the East River mentioned in these portions of the Yalden report to which you referred was identical with the present metes and bounds or the metes and bounds as they were in 1884?

Mr. Chambers: I object to that on the ground that counsel does not know what he is asking himself.

The Master: Of what?

41601

Mr. Ransom: Well, does he assume that this description of this ancient Yalden report, the property indicated by these references which the witness has made, were identical with the dimensions of the property as they stood at the time of the consolidation.

The Master: Dimensions of 15th to 16th Street, Avenue C and the East River?

Mr. Ransom: Yes?

The Witness: Substantially so, yes.

The Master: Now, tell me how you got $56,500 and $6,000, then we will adjourn?

The Witness: On the basis of $125,000 for the entire block.

Q. As it stood when?

Mr. Chambers: Don't interrupt, please.

The Master: Don't interrupt.

Mr. Ransom: Well, I would like to know when, and at what time.

The Master: You will permit me to finish this question and then you can cross-examine further tomorrow.

41603

Mr. Ransom: Exception.

A. On the basis of $125,000 for the entire block.

By the Master:

Q. From 15th to 16th Street, Avenue C to East River?

A. Yes. I found that the 270 feet was about 40 per cent of the entire block.

Q. Which 270 feet?

A. That is the Parcel 1 and Parcel 2.

Q. Well, I haven't got it in mind. Is that the easterly or westerly end of the block?

A. That is the westerly end of that block.

41604 Q. You mean you divided and apportioned that according to area?

A. There is the division (indicating map) that is about 40 per cent of the block.

Q. Yes.

A. And the 40 per cent of $125,000 would be $50,000, but in order to be sure that the amount was not understated as to the westerly end of the block which was more valuable in 1884 than was the easterly end of the block—

Mr. Ransom (interrupting): I move to strike that out.

The Witness (continuing): As indicated by the Rowland report.

The Master: I will strike that out as not responsive to my question. I want to know just how you got the figure?

The Witness: Well, 40 per cent would be $50,000.

Q. Yes.

A. Then to be sure that the figure I took was not too low, I made it 50 per cent, and took 62 1/2 and divided that between the two parcels, $6,000 for the irregular shaped piece, 25 feet on one side and 35 feet 41606
on the other, and $56,500 for the rest of it.

Q. Well now, tell me this, Parcel 1 is what the defendants concede to be used and useful?

A. Parcel 1, all the way through for the entire period, it is included in Mr. Hine's testimony.

Q. As used and useful?

A. Yes.

Q. And Parcel 2?

A. Parcel 2 was not owned by them, it was bought in 1918, but you recall Mr. Silverman testified that that is part of a parcel which they sold to the New York Edison Company, as I recall, upon the same day it was sold to the New Amsterdam Company, and 41607
then—I think it was the New Amsterdam Company—and then it was bought back by the Consolidated Gas Company, and they paid them for a rental of it running back several years.

Mr. Ransom: Well now, did you assume that the area of this property in 1884 was the same as it was at the time that it cost $125,000 to some predecessor company?

The Witness: I have answered that once.

Q. Well, answer it again.

A. I do.

Q. Do you know where the high water mark of the East River was at that time, in 1850 or 1860?

A. No.

Q. Have you any idea whether the high water mark was not along Parcel 2 at that time?

A. Parcel 2 at that time?

Q. Yes, as far west as Parcel 2.

A. You mean when they originally bought it?

Q. Yes, for $125,000.

A. I don't know.

Q. Well, that would make a good deal of difference,
41609 wouldn't it?

A. Yes.

Q. In other words, if the high water line at that time run out as far west as Parcel 2, that would mean that Parcel 1 or Parcel 2, or approximately that, would cost $125,000, not $62,500?

A. Well, that $125,000 included the water rights, of course, the upland plus the water rights would be $125,000.

Q. Suppose there were no water rights, but it simply ran down to high water mark?

A. I don't know—

Q. (Interrupting.) In other words, I don't know
41610 anything about it, but I can see at once where, with my knowledge of what has happened along the North and East Rivers and certain sections of the City, I don't know whether it has here or not, where this might have been developed in area by reason of filling in somewhere, or buying land under water, or something of that sort?

A. Well, that is possible; I don't know.

The Master: We will adjourn until 9:30.

Mr. Chambers: I have a motion on in the Kings County case.

The Master: Well, then, you will have to adjourn it.

Mr. Chambers: Before Judge Callaghan, and I have had one adjournment.

The Master: Well, I can't help it, I won't adjourn this case.

Mr. Clark: I would like to have the Franchise Tax Bills for 1916, 1917 and 1918 produced in the morning.

Mr. O'Brien: I offer in evidence as admissions against interest, without assenting to the reasonableness of the figures contained therein— 41612

The Master (interrupting): Well, you don't get anywhere with those limitations. You offer a document, or you don't.

Mr. O'Brien: Pages 10 and 28, 56 and 58 and 59 of the reports made to the Public Service Commission by the New Amsterdam Gas Company for the years 1914 to 1918, inclusive also page 51 of the reports of 1914 and 1915, and page 60 of the reports of 1916, 1917 and 1918.

Mr. Ransom: On that I shall want to object to the materiality of some portions of those as offered. Will you pass on them tomorrow morning? 41613

The Master: What is the purpose of the offer?

Mr. O'Brien: They go to the question of the taxes and the maintenance cost of the East River and Ravenswood Tunnel, and other joint facilities.

The Master: I will receive them subject to a motion to strike out. They will be considered in evidence, and as public documents it is not necessary to mark them.

Mr. Ransom: On the basis previously indicated.

The Master: Yes.

Adjourned until February 25, 1920, at 9:30 A. M.